

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 597.

THE UNITED STATES, APPELLANT,

vs.

WALTER FERGUSON, T. A. MANWARRING, A. A.
HATCH ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption.....	A	1
Transcript of record from the District Court of the United States for the Eastern District of Oklahoma.....	1	1
Bill of complaint.....	2	2
Exhibits, allotment deeds 40a and 39a, Creek Nation to Kochokney, November 10, 1903.....	6	6
Answer of defendants, Walter Ferguson et al.....	9	10
Order pro confesso against Hatch et al.....	18	16
Motion to strike answer of Ferguson et al.....	18	16
Order overruling motion to strike, etc.....	19	17
Order granting defendants leave to amend by striking portion of answer.....	19	17
Agreed statement of facts.....	20	17
Exhibit A. Copy of portion of Creek roll.....	23	20
Exhibit B. Copy of portion of Seminole roll.....	23	21
Exhibit C. Copy of Seminole census card No. 390.....	24	22
Exhibit D. Copy of Creek census card No. 2763.....	25	23
Exhibit. Warranty deed, dated July 21, 1905, Marchey Arm- strong to U. S. Cate.....	26	24
Exhibit. Quitclaim deed, dated January 30, 190—, R. M. Mc- Farlin, et ux. to Harry H. Rogers.....	27	25
Exhibit. Quitclaim deed, dated April 2, 1908, James A. Chap- man, et ux., to Harry H. Rogers.....	28	26

Transcript of record, etc.—Continued.

Agreed statement of facts—Continued.		
Exhibit. Warranty deed, dated Nov. 27, 1909, R. M. McFarlin, et ux., J. A. Chapman, et ux., to Walter Ferguson.....	29	27
Exhibit. Warranty deed, dated May 19, 1909, Harry H. Rogers, et ux., to F. M. Hale.....	31	28
Exhibit. Warranty deed, dated Dec. 13, 1909, Harry H. Rogers, et ux., to F. M. Hale.....	32	29
Exhibit. Quitclaim deed, dated Feb. 14, 1907, U. S. Cate, et ux., to Harry H. Rogers.....	33	30
Exhibit. Quitclaim deed, dated Nov. 11, 1908, The Creek Investment Company to Harry H. Rogers.....	34	31
Exhibit. Quitclaim deed, dated Feb. 8, 1909, Wm. A. Eubank to Harry H. Rogers.....	36	33
Exhibit. Quitclaim deed, dated Nov. 11, 1908, Alfred F. Goat to Harry H. Rogers.....	37	34
Exhibit. General warranty deed, July 5, 1905, Marchey Armstrong to U. S. Cate.....	38	35
Exhibit. Deed, June 24, 1905, Marchy Armstrong to U. S. Cate.....	39	36
Exhibit. Warranty deed, dated June 18, 1906, Marche Yekcha to Planters Trust Co.....	40	37
Exhibit. Quitclaim deed, dated March 11, 1907, Planters Trust Co. to R. M. McFarlin and J. A. Chapman.....	41	38
Exhibit. Warranty deed, August 17, 1907, Henehar Hockokney to Alfred F. Goat.....	43	39
Exhibit. Warranty deed, dated August 9, 1907, Marche Yekcha to Wm. A. Eubank.....	45	40
Exhibit. Warranty deed, dated June 23, 1906, Marchey Armstrong to Creek Investment Company.....	46	41
Decree.....	48	43
Petition for allowance of appeal.....	49	44
Assignment of errors.....	50	45
Order allowing appeal.....	52	46
Citation and service.....	52	47
Præcipe and election as to record.....	54	48
Certificate of clerk.....	57	50
Appearances.....	58	50
Order of submission.....	59	51
Opinion, Carland, J.....	60	51
Decree.....	63	53
Petition for appeal.....	64	54
Assignment of errors.....	65	54
Stipulation as to amount in controversy.....	67	56
Citation and service.....	69	56
Clerk's certificate.....	71	57

a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May term, 1915, of said court, before the Honorable Walter H. Sanborn and the Honorable John E. Carland, circuit judges, and the Honorable Jacob Trieber, district judge.

Attest:

[SEAL.]

JOHN D. JORDAN,

- *Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to-wit, on the eighth day of March, A. D. 1915, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United States of America is appellant and Walter Ferguson et al. are appellees, which said transcript, as prepared, printed, and certified by the clerk of said district court, in pursuance of an act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

1 In the United States District Court for the Eastern District of Oklahoma.

Pleas and proceedings before the Honorable Ralph E. Campbell, judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

UNITED STATES OF AMERICA, COMPLAINANT,

vs.

WALTER FERGUSON, T. A. MANWARRING, A. A. Hatch, L. L. Obannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Planters Trust Company, a corporation, The Creek Investment Company, a corporation, The Oklahoma Mining & Investment Company, a corporation, Soccer Bennett, and Louisa Hawkins, defendants.

Equity. No. 1972.

UNITED STATES OF AMERICA, APPELLANT,

vs.

WALTER FERGUSON, T. A. MANWARRING, A. A. Hatch, L. L. Obannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Planters Trust Company, a corporation, The Creek Investment Company, a corporation, The Oklahoma Mining & Investment Company, a corporation, Soccer Bennett, and Louisa Hawkins, appellees.

In the United States District Court for the Eastern District of Oklahoma. United States of America, complainant, v. Walter Ferguson, T. A. Manwarring, A. A. Hatch, L. L. Obannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Planters Trust Company, a corporation, The Creek Investment Company, a corporation, The Oklahoma Mining & Investment Company, a corporation, Soccer Burnett, and Louisa Hawkins, defendants.—No. 1972-E.

BILL OF COMPLAINT.

To the honorable judge of the United States District Court for the Eastern District of Oklahoma:

The United States of America, by William J. Gregg, United States attorney for the eastern district of Oklahoma, by direction of the Honorable James C. McReynolds, Attorney General of the United States of America, brings this bill against the defendants, Walter Ferguson, T. A. Manwarring, A. A. Hatch, L. L. Obannon, F. M. Hale, Harry H. Roges, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Soccer Burnett, and Louisa Hawkins, who are residents and citizens of the State of Oklahoma, residing within the Eastern Judicial District thereof and within the jurisdiction of this court, and against the defendants, Planters Trust Company, The Creek Investment Company, and The Oklahoma Mining & Investment Company, each of which are corporations duly organized and existing under and by virtue of the laws of the State of Oklahoma, and residing within the Eastern Judicial District thereof and within the jurisdiction of this court; and thereupon your orator complains and says:

I.

That for more than seventy years last past that portion of the Territory belonging to the United States and known and designated as the Indian Territory and now forming a part of the State of Oklahoma and within the Eastern Judicial District thereof, has been occupied by the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes or Nations of Indians, and that said above named tribes or nations of Indians form and constitute a particular and distinct class of Indians, known and designated as the Five Civilized Tribes, and distinguished from other Indians and under its care, protection, and control. That in many of the laws passed by the Congress of the United States pertaining to said Five Civilized Tribes of Indians and their property, they are referred to and designated as the Five Civilized Tribes of Indians, and that whenever so designated or referred to in any of the acts of Congress, each, every, and all of the said above named tribes of Indians were and are included within the provisions of such acts, in the same manner and with like force and effect as though each of said Five Civilized Tribes were particularly

and separately designated and named therein. That during all of the times mentioned herein the Creek Tribe or Nation of Indians has maintained and still maintains tribal relations *tribal relations* among themselves and toward this complainant, and complainant has at all the times mentioned herein in dealing with the said tribe, 3 recognized such tribal relations. That complainant has at all the times herein and still maintains an Indian agency for said tribe of Indians who has supervision and control over the tribal property belonging to said Creek Tribe of Indians.

II.

Your orator further shows that under and by virtue of existing treaties between complainant and the Creek Tribe or Nation of Indians and by virtue of the several acts of Congress passed in relation to the affairs and property of the Five Civilized Tribes of Indians, the United States Government has always and does now assume the relation of guardian and trustee of the property of the Indian tribes and members thereof constituting the Five Civilized Tribes. That its political department has always declared and now declares such relation to exist between the complainant and said tribes of Indians and especially the Creek Tribe in so far as the same relates to the members and property of said tribe of Indians.

That complainant under and by authority of the provisions of an act of Congress, passed and approved March 1, 1901 (31 Stat. L., 861), and the act of Congress approved June 30, 1902 (32 Stat. L., 500), and for the purpose of discharging its full duty and obligation towards said tribe of Indians and the individual members thereof and in accordance with the true spirit, intent, and purpose of its said trust, brings and prosecutes this action in its own behalf and in behalf of Marche Yekcha, sole heir at law of Suk-pi-e-chee or Henehar Kochokney, deceased, and who is a duly enrolled Indian of the full blood.

III.

Your orator further shows that Suk-pi-e-chee or Henehar Kochokney during his lifetime and at all the times hereinafter mentioned was a duly enrolled full blood member and citizen of the Creek Tribe or Nation of Indians, his name being enrolled opposite roll number 8051 of the approved rolls of said tribe. That said Suk-pi-e-chee or Henehar Kochokney on the 24th day of May, 1901, selected and there was thereupon allotted to him, as his distributive share of the public lands of the Creek Tribe or Nation of Indians other than homestead, the following described lands:

The west half of the southwest quarter of the southeast quarter and the west half of the west half of the east half of the southwest quarter of the southeast quarter, and lots 5 and 8 of section 8, town-

ship 7 north and range 8 east, and that thereafter and on the 10th day of November, 1903, a patent evidencing title to said lands in said Suk-pi-e-chee or Henehar Kochokney was duly signed by P. Porter, principal chief of the Creek Nation, and approved by the Secretary of the Interior on January 8, 1904, and filed for record in the office of the Commission to the Five Civilized Tribes on January 18, 1904.

That on said 24th day of May, 1901, there was duly selected by Suk-pi-e-chee or Henehar Kochokney and allotted to him as his homestead allotment in the Creek Tribe or Nation of Indians, the certain lands described as the west half of the west half of the east half of the southeast quarter of the southeast quarter; the west half of the southeast quarter of the southeast quarter; the east half of the east half of the southwest quarter of the southeast quarter; and the east half of the west half of the east half of the southwest quarter of the southeast quarter of section 8, township 7 north and range 8 east; and that thereafter and on the 10th day of November, 1903, patent was duly issued evidencing title to said lands as a homestead in said Suk-pi-e-chee or Henehar Kochokney and duly signed by P. Porter, principal chief of the Creek Nation, and approved by the Secretary of the Interior on January 8, 1904, and filed for record in the office of the Commission to the Five Civilized Tribes on January 18, 1904, copies of which said patents are hereto attached marked Exhibits A and B and made a part hereof.

IV.

That said Suk-pi-e-chee or Henehar Kochokney died on or about the 3rd day of March, 1903, leaving surviving him as his sole heir at law, Marche Yekcha, his son; that the mother of the said Marche Yekcha was a duly enrolled citizen and member of the Seminole Tribe of Indians of the full blood, who was the wife of said Suk-pi-e-chee or Henehar Kochokney; and that said Marche Yekcha is a full-blood Indian, being a one-half-blood Seminole Indian and one-half-blood Creek Indian.

That under and by virtue of the laws in force and effect at the time of the death of Suk-pi-e-chee or Henehar Kochokney, the said Marche Yekcha became and was the owner in fee simple of the said allotted lands of the said Suk-pi-e-chee or Henehar Kochokney and entitled to the possession thereof; and that said Marche Yekcha is now, and has been ever since the date of the death of the said Suk-pi-e-chee or Henehar Kochokney, the owner in fee simple of said lands and of every part thereof and entitled to the possession of the same.

V.

Your orator further shows that the said defendants, Louisa Hawkins and Soocer Bennett, claim some right, title, interest, or estate

in and to said lands as the heirs at law of Suk-pi-e-chee or Henehar Kochokney, the true nature and extent of which said claim is to complainant unknown, but your orator alleges that neither of said defendants have or ever had any right, title, or interest in and to said lands or were ever the lawful heirs of said Suk-pi-e-chee or Henehar Kochokney, and are not entitled to any interest or estate in the lands involved herein.

That the defendants, Walter Ferguson, T. A. Manwarring, A. A. Hatch, L. L. Obannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Planters Trust Company, a corporation, the Creek Investment Company, a corporation, and the Oklahoma Mining & Investment Company, a corporation, claim to have and to hold title and estate in said lands acquired by certain purported conveyances, which said conveyances were taken and executed at a time when the above and foregoing lands were inalienable and not subject to transfer or alienation in any manner, and were taken in violation of the terms and provisions of the act of Congress approved June 30, 1902, the act of Congress approved April 6, 1906, and the act of Congress approved May 27, 1908, and are therefore void and of no force and effect as instruments of conveyance of said lands or of any interest therein, and do not serve to vest in said defendants, or any one of them, any right, title, interest, or estate in and to said lands or to any portion thereof, and should be cancelled, annulled, set aside, and held for naught.

For inasmuch as your orator has no adequate remedy at law and can have no adequate and complete relief except by this court, and to the end, therefore, that said defendants may, if they can, show cause why your orator should not have the relief prayed for, your orator prays that it may have the most gracious writ of subpoena of this court issued and directed against the defendants and each of them, commanding them at a day certain and under certain penalties to personally be and appear before this court and to make a full disclosure and discovery of the matters aforesaid according to the best and utmost of their knowledge, remembrance, information, and belief, and disclose any and all evidences of title under and by virtue of which they assert and claim an interest in the lands aforesaid, and true, direct, and perfect answers make to the matters hereinbefore stated and charged, but not under oath, answer under oath being hereby expressly waived.

6 Your orator further prays that this honorable court by its decree shall adjudge and decree that any and all instruments of conveyance or evidences of title which purport to convey the lands hereinbefore described or any portion thereof, be adjudged and decreed to be void and of no force and effect as instruments of conveyance, and that the same be cancelled, annulled, set aside, and held for naught; that the right, title, and interest and the right of the use, occupancy, and possession of said lands be adjudged and decreed to

be in complainant subject to the rights of Marche Yekcha, and that complainant have such other and further relief as in equity and good conscience shall seem right and proper under the premises herein.

JOHN B. MESERVE,
Assistant United States Attorney.

Allotment deed. (40a) Cherokee Indian----- roll, No. 8051.

THE MUSKOGEE (CREEK) NATION, INDIAN TERRITORY.

To all whom these presents shall come, greeting:

Whereas by the act of Congress approved March 1, 1901 (31 Stat., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give each an equal share of the whole in value, as nearly as may be; and

Whereas it was provided by said act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed; and

Whereas the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Henehar Kochokney, a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid act of the Congress of the United States, have granted and conveyed and by these presents do grant

and convey unto the said Henehar Kochokney all right, title,
7 and interest of the Muskogee (Creek) Nation and of all other citizens of said nation in and to the following described land, viz:

The west half of the south west quarter of the south east quarter and the west half of the west half of the east half of the south west quarter of the south east quarter and lots five (5) and eight (8) of section eight (8), township seven (7) north and range eight (8) east of the Indian base and meridian, in Indian Territory, containing one hundred and twenty and 39/100 (120.39) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said act of Congress relating to appraisement and valuation and to the provisions of the act of Congress approved June 30, 1902 (Public, No. 200).

In witness whereof, I, the principal chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this 10th day of November, A. D. 1903.

[SEAL.]

P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.
DEPARTMENT OF THE INTERIOR, LRS

Approved Jan. 8, 1904.

ETHAN A. HITCHCOCK, *Secretary.*
By OLIVER A. PHELPS, *Clerk.*

Filed for record on the 18 day of Jan., 1904, at 10 o'clock a. m.

Department of the Interior, Commissioner to the Five Civilized Tribes. This is to certify that I am the officer having custody of the record of the deeds of the Muskogee (Creek) Nation and that the above and foregoing is a true and correct copy of the allotment to Henehar Kochokney as the same appears of record in book 20, page 227, of Muskogee (Creek) deed record. In testimony whereof witness my hand this 17 day of Apr., 1913.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.

Homestead deed. (39a) Creek Indian ——— Roll No. 8051.

THE MUSKOGEE (CREEK) NATION, INDIAN TERRITORY.

To all whom these presents shall come, greeting:

Whereas by the act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas it was provided by said act of Congress that each citizen shall select, or have selected for him, from his allotment, forty acres of land as a homestead for which he shall have a separate deed; and

Whereas the said commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Henechar Kochokney, a citizen of said tribe, as a homestead:

Now therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid act of the Congress of the United

States, have granted and conveyed and by these presents do grant and convey unto the said Henehar Kochokney all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said nation in and to the following described land, viz: The west half of the west half of the east half of the south east quarter of the south east quarter; the west half of the south east quarter of the south east quarter; the east half of the east half of the south west quarter of the south east quarter; and the east half of the west half of the east half of the south west quarter of the south east quarter of section eight (8), township seven (7) north, and range eight (8) east of the Indian base and meridian, in Indian Territory, containing forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said act of Congress, and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to the provisions of said act of Congress relating to the use, device, and descent of said land after the death of the said Henehar Kochokney; and subject, also, to all provisions of said act of Congress relating to appraisement and valuation and to the provisions of the act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the principal chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this 10th day of November, A. D. 1903.

[SEAL]

P. PORTER,

Principal Chief of the Muskogee (Creek) Nation.

9

DEPARTMENT OF THE INTERIOR, LRS

Approved Jan. 8, 1904.

ETHAN A. HITCHCOCK, *Secretary,*
By OLIVER A. PHELPS, *Clerk.*

Filed for record on the 18 day of Jan., 1904, at 10 o'clock a. m.

Department of the Interior, Commissioner to the Five Civilized Tribes. This is to certify that I am the officer having custody of the record of the deeds of the Muskogee (Creek) Nation, and that the above and foregoing is a true and correct copy of the homestead to Henehar Kochokney as the same appears of record in book T, page 229 of Muskogee (Creek) deed record. In testimony whereof, witness my hand this 17 day of Apr., 1913.

J. G. WRIGHT,

Commissioner to the Five Civilized Tribes.

[Endorsed:] Filed Apr. 22, 1913, R. P. Harrison, clerk United States District Court, Eastern District of Oklahoma.

And, to-wit, on the 12th day of June, A. D. 1913, the defendants, Walter Ferguson, T. A. Manwarring, F. M. Hale, Harry H. Rogers,

Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarlin, Planters' Trust Company, a corporation, the Creek Investment Company, a corporation, the Oklahoma Mining and Investment Company, a corporation, filed their answer herein, which is in words and figures as follows:

THE ANSWER OF WALTER FERGUSON, T. A. MANWARRING, F. M. HALE, HARRY H. ROGERS, ALFRED GOAT, WILLIAM A. EUBANKS, J. A. CHAPMAN, R. M. MCFARLIN, PLANTERS' TRUST COMPANY, A CORPORATION, THE CREEK INVESTMENT COMPANY, A CORPORATION, THE OKLAHOMA MINING AND INVESTMENT COMPANY, A CORPORATION, OF THE DEFENDANTS ABOVE NAMED, TO THE BILL OF COMPLAINT EXHIBITED AGAINST THEM BY ABOVE-NAMED COMPLAINANT.

These defendants now and at all times hereafter, saving and reserving to themselves and each of them all and all manner of benefits and advantages of exceptions which may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's bill of complaint contained, for answer thereto
10 or unto so much or such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

1. That they admit the citizenship and residence of these defendants as alleged in the bill of complaint.

2. That they admit that that territory formerly known and designated as Indian Territory, and now forming a part of the State of Oklahoma, has been occupied by the tribe of Indians commonly referred to and designated as the Five Civilized Tribes of Indians; and that the Creek Tribe or Nation of Indians has maintained, and still maintains tribal relations among themselves and toward the complainant herein; and that the complainant herein has recognized such tribal relations; and admit that the complainant herein maintains an Indian agency for said Creek Tribe of Indians, who have supervision and control over the tribal property belonging to said Creek Tribe of Indians.

3. That they admit that the United States Government has always and does now assume the relation of guardian and trustee of the Indian tribes and members thereof constituting the Five Civilized Tribes, and that its political department has always declared and now declares such relation to exist between complainant herein and such tribes of Indians, and especially the Creek Tribe in so far as the same relates to the members and property of said tribe of Indians. And these defendants admit that Marchee Yekcha, in whose behalf the complainant herein prosecutes this action, is the sole heir at law of Suk-pi-e-chee, or Henehar Kochokney, deceased, but deny that the said Marchee Yekcha is enrolled as an Indian of the full blood.

4. That these defendants admit that the said Suk-pi-e-chee, or Henehar Kochokney, was a duly enrolled full-blood member of the

Creek Tribe or Nation of Indians, being enrolled opposite No. 8031 of the approved rolls of said tribe, and they admit that the said Suk-pi-e-chee, or Henehar Kochokney, made the selection of lands at the times stated in complainant's bill of complaint, and that there was thereupon allotted to him as his distributive share of the lands of the Creek Tribe of Indians the lands described in said complainant's bill of complaint as surplus and homestead, respectively; and admit that patents evidencing title to said lands were duly issued to said allottee, as alleged in said bill of complaint.

5. That they admit that the said Suk-pi-e-chee, or Henehar Kochokney, died on or about the 3rd day of March, 1903, leaving surviving him as his sole heir his son, Marchee Yekcha; and
11 they admit that the mother of the said Marchee Yekcha was a duly enrolled member and citizen of the Seminole Tribe of Indians, of full-blood Seminole Indian, who was the wife of Suk-pi-e-chee, or Henehar Kochokney, and they admit that the said Marchee Yekcha is a half-blood Seminole Indian and a half-blood Creek Indian, but deny that the said Marchee Yekcha is a full-blood Indian, but they charge and aver that the said Marchee Yekcha was enrolled opposite No. 1278 of the approved rolls of the Seminole Tribe of Indians as a half-blood Seminole, and as such at the time he made the conveyances to these defendants complained of in complainant's bill of complaint he had a good and sufficient right to convey the said lands. That they admit that under and by virtue of the laws in force and effect at the time of the death of the said Suk-pi-e-chee, or Henehar Kochokney, the said Marchee Yekcha became and was the owner in fee simple of the said allotted lands of the said Suk-pi-e-chee, or Henehar Kochokney, particularly described in complainant's bill of complaint, but they deny that the said Marchee Yekcha is now the owner of said lands and that he is entitled to the possession of the same.

6. These defendants admit that the defendants Louisa Hawkins and Sooker Bernett claim some right, title, and interest in and to the said lands as the heirs of Suk-pi-e-chee or Henehar Kochokney, but these defendants deny that the said Louisa Hawkins and Sooker Bernett have, or ever had, any right, title, or interest in and to said lands, and charge and aver that the said Louisa Hawkins and Sooker Bernett are not and never were the lawful heirs of the said Suk-pi-e-chee or Henehar Kochokney, and deny that they are entitled to any interest or estate in the lands described in said bill of complaint.

7. That these defendants deny that the instruments of conveyance by which these defendants claim title to said lands were taken in violation of the terms and provisions of any acts of Congress and deny that said conveyances were void and of no force and effect and deny that at the time said conveyances were made to these defendants that the lands described in said bill of complaint were inalienable and not subject to transfer or alienation in any manner, and charge and aver the fact to be that all of said conveyances through

and under which these defendants claim an interest in the lands in controversy described in the bill of complaint were obtained in good faith and for valuable considerations and for the sole and only purpose of purchasing the said lands. And the defendants deny that this court should order the said instruments of conveyance, or any of them, cancelled and surrendered up, and charge and aver
12 the fact to be that by the said conveyances these defendants became vested with good and complete title to the said described lands.

8. And the defendants further answering, charge and aver that the land in controversy was selected by and allotted to Henehar Kochokney, a citizen of the Creek Nation, enrolled under No. 8051, and that the said Henehar Kochokney was also known as Suk-pi-e-chee, and that Marche Yekcha, who was and is the sole heir of the said named allottee of said land, and that the said allottee died on, or about the 3rd day of March, 1903, intestate and unmarried, and that at his death the said Marche Yekcha inherited all of the said described land as the sole heir of the said allottee.

That of the said land so inherited that portion of the lands allotted as a homestead and particularly described as such in the bill of complaint herein descended to the said Marche Kekcha free from all limitation or restriction upon the allotment under the laws of the United States and the treaties with the Creek Nation in such cases made and provided, and that thereafter the said Marche Yekcha held and retained the said homestead portion of said lands free and clear of all restriction.

That from and after the 26th day of April, 1906, the remaining portion of the said lands allotted to the said allottee were held and owned by the said Marche Yekcha free and clear of all restriction upon alienation, and that he had a full and complete right from said date to convey the same.

That the defendants herein claim that they now hold, or have heretofore held, title to portions of the said land under and by virtue of the following particularly described deeds of conveyance.

(a) That on the 24th day of June, 1905, the said Marche Yekcha, also known as Marchey Armstrong, for a valuable consideration, conveyed to U. S. Cate, of Wewoka, Indian Territory, that portion of the said land described as the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ and W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 8, T. 7 N., R. 8 E., by warranty deed, which said deed was duly recorded in the office of the deputy clerk of the United States Court and ex officio recorder at Wewoka, Indian Territory, on June 28, 1905, in book E, at page 175, and which now appears of record in the office of the register of deeds of Hughes County, Oklahoma. That by the said deed that portion of the land so sought to be conveyed embraced within the homestead allotment of the said allottee was rightfully and lawfully conveyed to the said U. S. Cate.

13 (b) That thereafter on the 5th day of July, 1905, the said Marche Yekcha, or Marchey Armstrong, for a valuable consideration to him paid by U. S. Cate conveyed by warranty deed to

the said U. S. Cate that portion of the said land described as the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, all in section 8, T. 7 N., R. 8 E., which said deed was duly recorded on July 5, 1905, in the office of the deputy clerk of the United States court and ex-officio recorder at Wewoka, Indian Territory, in book C, at page 386, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma, and that by the said conveyance all that portion of the land so conveyed embraced within the homestead allotment of the said allottee was legally and rightfully conveyed to the said U. S. Cate.

(c) That thereafter on the 21st day of July, 1905, the said Marche Yekcha, or Marchey Armstrong, for a valuable consideration to him paid by U. S. Cate, conveyed by warranty deed to the said U. S. Cate, that portion of the land in controversy described as SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, all in section 8, T. 7 N., R. 8 E., of I. B. & M., which said deed was duly recorded in the office of the deputy clerk of the United States court and ex-officio recorder, at Wewoka, Indian Territory, on July 21, 1905, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma, and that by the said conveyance all of that portion of the said land so sought to be conveyed embraced in the homestead allotment aforesaid was lawfully conveyed to the said U. S. Cate.

(d) That thereafter on the 18th day of June, 1906, the said Marche Yekcha, by warranty deed, conveyed to Planters Trust Company, a corporation of Holdenville, Indian Territory, all of the land in controversy herein, for a valuable consideration, and that the deed conveying the same was recorded in the office of the deputy clerk of the United States court and ex-officio recorder, at Wewoka, Indian Territory, on June 19, 1906, in book K, at page 588, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma; and that by the said conveyance all of the land embraced in said allotment was conveyed to the said Planters Trust Company, and that the said deed operated to pass title to said Planters Trust Company all of the said land not

14 previously conveyed by the said Marche Yekcha to U. S. Cate as aforesaid, and also operated to convey to the said Planters Trust Company any right, title, or interest which he, the said Marche Yekcha, might have retained in the homestead portion of said land previously conveyed by him to the said U. S. Cate.

(e) That thereafter on the 23rd day of June, 1906, the said Marche Yekcha, under the name of Marchey Armstrong, conveyed to the Creek Investment Company, of Holdenville, Indian Territory, for a valuable consideration to him paid, all of the said described land, being the W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of section 8, T. 7 N., R. 8 E.,

and that the said conveyance by the said Marche Yekcha, or Armstrong, conveyed to the said Creek Investment Company any interest he might have retained in the said tract of land. That the said deed was duly recorded on the 25th day of June, 1906, in the office of the deputy clerk of the United States court and ex-officio recorder, at Wewoka, Indian Territory, in book L, at page 123, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma.

(f) That thereafter on the 14th day of February, 1907, the said U. S. Cate, joined by his wife, for a valuable consideration, conveyed to the defendant Harry H. Rogers all of that portion of the land in controversy described as the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, all in section 8, T. 7 N., R. 8 E., and that the said deed conveying the same was duly recorded in the office of the deputy clerk of the United States court and ex-officio recorder, at Wewoka, Indian Territory, on the 18th day of February, 1907, in book F, at page 588, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma.

(g) That thereafter on the 11th day of March, 1907, the Planters Trust Company, aforesaid, for a valuable consideration, conveyed by quit claim deed all of the land heretofore conveyed to it by the said Marche Yekcha to R. M. McFarlin and J. A. Chapman, which said deed was duly recorded on May 2, 1907, in the office of the deputy clerk of the United States court and ex-officio recorder, at Wewoka, Indian Territory, in book L, at page 381, and now appears of record in the office of the recorder of deeds of Hughes County, Oklahoma.

15 (h) That thereafter, on the 9th day of August, 1907, the said Marche Yekcha conveyed all of the land in controversy by warranty deed to William A. Eubank, which said deed was duly recorded in the office of the deputy clerk of the United States court and ex-officio recorder, at Wewoka, Indian Territory, in book U, at page 390, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma. That the said Marche Yekcha at the time of said conveyance had no interest or title in or to any portion of the said described land, but that the said deed did operate to convey to the said William A. Eubank all interest in or title to any portion of the said lands which might have been retained at said time by the said Marche Yekcha.

(i) That thereafter, on the 17th day of August, 1907, the said Marche Yekcha, under the name of Marchey Armstrong, conveyed to Alfred F. Goat by warranty deed that portion of the land in controversy herein described as the E. $\frac{1}{4}$ of SW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and lots 5 and 8, all in section 8, T. 7 N., R. 8 E., and that the said deed conveying the same was recorded on August 19, 1907, in the office of the deputy clerk of the United States

court and ex-officio recorder, at Wewoka, Indian Territory, in book U, at page 511, and now appears of record in the office of the register of deeds of Hughes County, Oklahoma. That the said Marche Yekcha at the time of said conveyance had no right, title, or interest in or to any portion of the land in controversy, but that he was competent to convey, and that the said deed did operate to convey any interest in or to the said land which might have been retained by him at said time.

(j) That thereafter, on the 11th day of November, 1908, the said Alfred F. Goat, for a valuable consideration, conveyed to Harry H. Rogers, one of the defendants herein, all of the land conveyed to him by the said Marche Yekcha, as herein above set out, and that the deed conveying the same was duly recorded in the office of the register of deeds of Hughes County, Oklahoma, on December 24, 1908.

(k) That thereafter, on the 11th day of November, 1908, the Creek Investment Company aforesaid conveyed all of the land so conveyed to it, as above set out, to the defendant Harry H. Rogers, and that the deed so conveying the same was duly recorded in the office of the register of deeds of Hughes County, Oklahoma, on December 24, 1908.

(l) That thereafter, on the 8th day of February, 1909, the said William A. Eubank conveyed all of the land so conveyed to him, as herein above set out, to the defendant Harry H. Rogers, and that the deed conveying the same was duly recorded in the office of the register of deeds of Hughes County, Oklahoma, on February 10, 1909, in book F, at page 158.

(m) That thereafter, on the 30th day of January, 1909, the said R. M. McFarlin, above mentioned, joined by his wife, for a valuable consideration, conveyed to the defendant Harry H. Rogers all of his interest in that portion of the land in controversy described as SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, all in section 8, T. 7 N., R. 8 E., and that the said deed conveying the same was duly recorded in the office of the register of deeds of Hughes County, Oklahoma, on February 10, 1909.

(n) That thereafter, on the 2nd day of April, 1908, the said James A. Chapman, above mentioned, joined by his wife, conveyed to the defendant Harry H. Rogers all of his interest in and to that portion of the land in controversy described as the W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, all in section 8, T. 7 N., R. 8 E., and that the deed conveying the same was duly recorded on February 10, 1909, in the office of the register of deeds of Hughes County, Oklahoma, in book F, at page 156.

(o) That thereafter, on the 19th day of May, 1909, the defendant Harry H. Rogers, joined by his wife, for a valuable consideration,

conveyed to the defendant F. M. Hale that portion of the land in controversy described as the W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, all in section 8, T. 7 N., R. 8 E., and containing 25 acres, more or less, and that the deed conveying the same was duly recorded on the 24th day of May, 1909, in the office of the register of deeds of Hughes County, Oklahoma, in book 1, at page 437, and that by the said conveyance the defendant F. M. Hale became and still is the owner in fee of all of the said described land mentioned in the said conveyance.

(p) That thereafter, on the 13th day of December, 1909, the defendant Harry H. Rogers, joined by his wife, for a valuable consideration, conveyed to the defendant F. M. Hale that portion of the land in controversy herein described as the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 8, T. 7 N., R. 8 E., and that the deed conveying the same was duly recorded in the office of the register of deeds of Hughes County, Oklahoma, on the 7th day of January, 1910, in book 3, at page 327; and that by said conveyance the said defendant F. M. Hale became and still is the owner of the land described therein, containing forty (40) acres, more or less.

(q) That on the 27th day of November, 1909, the defendants R. M. McFarlin and J. A. Chapman, joined by their wives, conveyed to the defendant Walter Ferguson by warranty deed, for a valuable consideration, all of that part of the land in controversy described as lots five (5) and eight (8) of section 8, T. 7 N., R. 8 E., of Indian base and meridian, and that the deed conveying the same was duly recorded on the 5th day of January, 1910, in the office of the register of deeds of Hughes County, Oklahoma, and that by the said conveyance the defendant Walter Ferguson became and still is the owner of the land described therein, containing ninety-five acres, more or less.

(r) That the defendant F. M. Hale is in the actual physical possession of the land so conveyed to him by the two separate deeds from Harry H. Rogers, hereinabove particularly described; and the defendant Walter Ferguson is in the actual physical possession of the land so conveyed to him, as hereinabove set out; and that by the said several conveyances the defendants F. M. Hale and Walter Ferguson have become vested with good and complete title to the said several tracts of land so conveyed to them.

Wherefore, the premises considered, these defendants pray that complainant take nothing herein, and that the bill of complaint herein be dismissed with costs.

GIBSON & THURMAN,
Solicitors for Said Defendants.

(Endorsed:) Filed Jun. 12, 1913, R. P. Harrison, clerk United States District Court, Eastern District of Oklahoma.

And to wit, on the 13th day of June, A. D. 1913, in compliance with the praecipe of the counsel for the complainant, the clerk
18 entered order pro confesso against A. A. Hatch and Soccer
Bernett herein, which is in words and figures as follows:

ORDER PRO CONFESSO.

Now comes United States by John B. Meserve, solicitors, and elects to take order pro confesso against A. A. Hatch, Soccer Barnett for failure to plead answer or demur in this cause.

R. P. HARRISON, *Clerk.*

(Endorsed:) Filed Jun. 13, 1913. R. P. Harrison, clerk United States District Court, Eastern District of Oklahoma.

And to wit, on the 13th day of June, A. D. 1913, the complainant filed motion to strike the answer of Walter Ferguson et al. from the files, which motion is in words and figures as follows:

MOTION TO STRIKE.

Comes now complainant herein and moves the court to enter its order herein striking the joint and separate answer of the defendants Walter Ferguson, T. A. Manwarring, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarlan, Planters Trust Company, a corporation, and the Oklahoma Mining & Investment Company, a corporation, from the files in this case for the reason—

First. That said answer is not responsive to the allegations contained in complainant's bill.

Second. That the matters and things set forth and contained in said answer constitute no defense to the allegations contained in complainant's bill.

Third. That said answer does not state facts sufficient to constitute a defense to complainant's bill nor to deny the right of complainant to the relief prayed for.

Wherefore complainant prays that said answer be stricken from this case.

JOHN B. MESERVE,
*Assistant United States Attorney,
Solicitor for Complainant.*

(Endorsed:) Filed Jun. 13, 1913. R. P. Harrison, clerk U. S. District Court, Eastern District of Oklahoma.

And to wit, on the 2nd day of February, A. D. 1914, the same being one of the days of the regular January, 1914, term of the United States District Court for the Eastern District of Okla-
19 homa, court met pursuant to adjournment at Muskogee, Okla-

homa. Present and presiding the Honorable Ralph E. Campbell, judge.

Among the proceedings had on this day is the following:

ORDER OVERRULING MOTION TO STRIKE ANSWER.

In the United States District Court for the Eastern District of Oklahoma:

Now on this 2nd day of February, 1914, the same being a regular judicial day of the January, 1914, term of this court and a rule day of this court, comes on to be heard the motion of the above named complainant to strike the answer of the defendants Walter Ferguson et al., the complainant being present by its counsel, C. C. Herndon, assistant United States attorney, and the defendants being present by their counsel, Gibson and Thurman; and the court, having considered the said motion and being well and sufficiently advised in the premises, is of the opinion the same should be overruled.

It is therefore considered, ordered, and decreed by the court that complainant's motion to strike the answer of the defendants Walter Ferguson et al., be, and the same is hereby, overruled, to which action of the court in overruling the said motion the complainant duly excepts, and its exceptions are allowed.

RALPH E. CAMPBELL,

Judge of the U. S. District Court.

And to wit, on the 13th day of July, A. D. 1914, the following proceeding was had in this cause. The Honorable Ralph E. Campbell, presiding:

ORDER GRANTING DEFENDANTS LEAVE TO AMEND BY STRIKING PORTION OF ANSWER.

Now on this 13th day of July, 1914, comes the defendants Walter Ferguson, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarlin, Planters' Trust Company, a corporation, the Creek Investment Company, a corporation, and the Oklahoma Mining and Investment company, a corporation, by their attorneys, Gibson & Thurman, and move the court for leave to amend by striking certain portions of their answer, and the court being sufficiently advised in the premises doth grant said motion and orders that said portions of the answer be stricken.

And to wit, on the 13th day of July, A. D. 1914, the parties hereto filed an agreed statement of facts, which is in words and figures as follows:

20

AGREED STATEMENT OF FACTS.

Come now the United States of America, by D. H. Linebaugh, United States attorney, and C. C. Herndon, special assistant to the

United States attorney, its solicitors of record, and the defendants, Walter Ferguson, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarlin, Planters' Trust Company, a corporation, the Creek Investment Company, a corporation, by Gibson & Thurman, their solicitors of record, and agree that the following are the facts of this case, upon which, together with such parts of the pleadings as are expressly admitted to be true, the court may base its determination of the issues raised by the pleadings in this case. It is accordingly stipulated and agreed:

This suit is brought by the United States by its United States attorney for the Eastern District of Oklahoma acting by direction of the Attorney General of the United States. The defendants have the status, situs, residence, and citizenship as averred in the bill of complainant. The averments of paragraph 1 of the bill of complaint herein are true. The United States Government has always assumed, and does now assume, the relation of guardian and trustee toward the affairs and property of the Indian tribes and the members thereof constituting the Five Civilized Tribes, and its political department has always declared and now declares such relation to subsist between the United States Government and said tribes of Indians, especially the Creek Tribe. The United States prosecutes this action in its own behalf and in behalf of Marche Yekcha, the person hereinafter referred to by that name. Henehar Kochokney during his lifetime and at all the times hereinafter mentioned was a duly enrolled member and citizen of the Creek Tribe of Indians, his name being opposite No. 8051 on the final approved rolls of citizens by blood of the Creek Tribe, himself being there designated as being of full Creek Indian blood. On May 24, 1901, the said Henehar Kochokney selected, and there was allotted to him as his distributive share of the public lands of the Creek Tribe of Indians, other than homestead, the following described parcels of land:

The west half of the west half of the east half of the southwest quarter of the southeast quarter, and the west half of the southwest quarter of the southeast quarter, and lots 5 and 8, all in section 8, township 7 north, range 8 east, containing in all 120.39 acres.

21 On November 10, 1903, a patent evidencing title to said lands in said Henehar Kochokney was signed by P. Porter, principal chief of the Creek Nation, and on January 8, 1904, was approved by the Secretary of the Interior, and on January 18, 1904, was filed for record and recorded in the office of the Commission to the Five Civilized Tribes. On May 24, 1901, the said Henehar Kochokney selected and there was allotted to him as his homestead allotment of the lands of the Creek Tribe the following parcels:

The west half of the west half of the east half of the southeast quarter of the southeast quarter and the west half of the southeast quarter of the southeast quarter, and the east half of the east half of the southwest quarter of the southeast quarter and the east half

of the west half of the east half of the southwest quarter of the southeast quarter.

On November 10, 1903, a patent evidencing title to said lands in said Henehar Kochokney was signed by P. Porter, principal chief of the Creek Nation, and on January 8, 1904, was approved by the Secretary of the Interior, and on January 18, 1904, was filed for record and recorded in the office of the Commission to the Five Civilized Tribes.

The said Henehar Kochokney died on March 3, 1903, leaving surviving him as his sole heir at law, the son of his body, one Marche Yekcha, the mother of the said Marche Yekcha having been one Eliza, who was in her lifetime the wife of said Henehar Kochokney, and who was a citizen and member of the Seminole Tribe of Indians, but whose name does not appear on the final approved rolls of citizens and members of any of the Five Civilized Tribes of Indians. The said Marche Yekcha was duly enrolled as a Seminole Indian, his name appearing on the final approved rolls of Seminole Indians by blood opposite No. 1278, and he is designated on the said roll as being of the one-half Seminole Indian blood. The said Marche Yekcha, on the death of his said father, Henehar Kochokney, became invested by inheritance, by virtue of being the sole heir at law of his said father, with the title to the allotted lands hereinbefore described. The said Henehar Kochokney was in his lifetime known also as Suk-pi-e-chee. A copy of a portion of the roll of Creek Indians by blood exhibiting the enrollment thereon of the said Henehar Kochokney or Suk-pi-e-chee, and a copy of a portion of the roll of Seminole Indians by blood exhibiting thereon the enrollment of the said Marche Yekcha are hereto attached as Exhibits A and B, respectively, the said copies being duly certified by the Commissioner to the Five Civilized Tribes in whose official custody the original rolls remain of record. A copy of Seminole census card No. 380
22 exhibiting the name of Marche Yekcha and his relation to his said father, Henehar Kochokney, or Suk-pi-e-chee, and a copy of Creek census card No. 2763 exhibiting the name of Henehar Kochokney are hereto attached and made a part hereof as Exhibits C and D, said copies being duly certified by the Commissioner of the Five Civilized Tribes, in whose official custody the original census cards remain of record.

Since the death of the said Henehar Kochokney, and up to the time of the institution of this suit, certain deeds have been executed by the vendors named therein, and on the dates stated therein, respectively, purporting to convey the allotted lands hereinbefore described or some portion or portions thereof, and the said deeds are of record in the office of the register of deeds of Hughes County, Oklahoma, that being the county in which the lands lie. Each of the said deeds recites and was executed for a valuable and single consideration. True copies of the said deeds are hereto attached and made a part of this agreed statement of facts, as Exhibits E to U,

inclusive. The Marche Yekcha, or Marchey Armstrong, named or referred to in the said deeds or any of them is the same person as the Marche Yekcha hereinbefore referred to, whose name appears opposite No. 1278 on the final approved roll of Seminole Indians by blood. None of the said deeds has ever been approved by the Secretary of the Interior of the United States or by any court or judge of the State of Oklahoma. At the time of the filing of the bill of complaint the defendants, Hale and Ferguson, were in possession of the land in controversy.

This agreed statement of facts shall be taken and considered as the basis on which the court may rest its determination of the questions of law raised under the pleadings herein, and is in lieu of evidence to be introduced at the trial of this cause, except that the parties hereto reserve to themselves, respectively, the right to introduce at the trial of this cause relevant and competent evidence to show the quantum of Seminole Indian blood possessed by the aforesaid Eliza, the mother of the said Marche Yekcha, such evidence to be subject to the usual objections for irrelevancy and incompetency.

D. H. LINEBAUGH,
United States Attorney.

C. C. HERNDON,
*Special Assistant to the United States Attorney,
Solicitors for Complainant.*

HARRY H. ROGERS,
N. A. GIBSON,
Solicitors for Defendants.

23

EXHIBIT A.

(Form 56.)

Department of the Interior, Commissioner to the Five Civilized Tribes.

Creek roll, Indians by blood.

Number 8051; name, Kochokney, Henehar; age, 60; sex, M; blood, full; card No. 2763.

This is to certify that I am the officer having custody of the approved roll of citizens by blood of Creek Nation, and that the above and foregoing is a true and correct copy of that portion of said roll appearing at number 8051.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.

C. H. DREW, *Clerk.*

Muskogee, Oklahoma, July 8, 1914.

EXHIBIT B.

93.

Department of the Interior, Commissioner to the Five Civilized Tribes.

Seminole roll, Indians by blood.

No. 1278; name, Yekcha, Marche; age 30; sex, M.; blood, $\frac{1}{2}$. Tribal enrollment: Year, 1897; band, Echo Emarthoge; No. 1; census card No. 380.

This is to certify that I am the officer having custody of the approved roll of citizens by blood of Seminole Nation and that the above and foregoing is a true and correct copy of that portion of said roll appearing at number 1278.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.

C. H. DREW, *Clerk.*

Muskogee, Oklahoma, July 8, 1914.

24

Residence _____

Post office, Wewoka, Ind. Ter.

EXHIBIT C.

Seminole Nation, Seminole roll.

Card No. 380.
Field No. 380.

Dawes' roll No.	Name	R'ty'p to p'm int-mnd.	A.	S.	Bld.	Tribal enrollment.			Tribal enrollment of parents.				
						Year.	Band.	No.	Name of father.	Year.	Band.	Name of mother.	Year.
1273	1 Yachia, Marcho	Wis.	30	M.	1 1/2	1897	Echo Emarthoge.	1	Sub-pl-e-choe	1897	Creek citizen	(1896-2945)	Dead.
1279	2 Yachia, Louis	Wis.	35	F.	Full.	1897	Echo Emarthoge.	20	Willie Baby	Dead.	Echo Emarthoge.	Cow-ho-p-o-g-e	Dead.
1280	3 Alla	St.-an	15	M.	1/4	1897	Echo Emarthoge.	20	Willie Baby	1897	Thomas Palmer	No. 2 (3281)	Dead.
1281	4 Lucy	St.-dr	4	F.	1/4	1897	Echo Emarthoge.	20	Willie Baby	1897	Thomas Palmer	No. 2 (3281)	Dead.
1282	5 Maude	St.-dr	6	F.	1/4	1897	Echo Emarthoge.	20	Willie Baby	1897	Thomas Palmer	No. 2 (3273)	Dead.
1283	6 Harjo, Hills	Br.-Jw.	40	M.	Full.	1897	Echo Emarthoge.	20	Willie Baby	Dead.	Echo Emarthoge.	Cow-ho-p-o-g-e	Dead.
1284	7 Yachia, Joseph	St.	1	M.	1/4	Echo Emarthoge.	No. 1	No. 2 (3298)

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Oklahoma.

No. 7 enrolled August 21, 1900.

No. 2 died Dec. 20, 1901—Proof filed, Land Office notified, May 25, 05.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Seminole Indian census card No. 380.

Jul 8, 1914,
C. H. D.

Commissioner to the Five Civilized Tribes.

J. G. WRIGHT,

Ages given herein for those having a tribal enrollment number Enrollment of Nos. 1278 to 1284 Inc. herein approved by the Secretary of Interior Apr. 2nd, 1901.

[Printer's note: Figures in parentheses written on exhibit in red ink.]

93

EXHIBIT D.

Residence — district.

Post office. Wewoka, Ind. Ter.

Card No. 2763.

Field No. 2855.

Creek Nation. Creek roll.

Dawes' Roll No.	Name.	R't's p' to p'm list-ened.	A. S.	Bld.	Tribal enr'ment.			Tribal enrollment of parents.						
					Year.	Band.	No.	Name of father.	Year.	Band.	Name of mother.	Year.	Band.	
8081	1 Ketchumey, Heme-har.	60	M.	Full.	1905	Tuckabatches....	08	Meehusey	Dead.	Tuckabatches....	Dead.	Tuckabatches.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Creek Indian census card No. 2763.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.
By **T. C. HUMPHRY, Jr.,**
Clerk in charge of Creek records.

Dec. 16, 1911,
O. H. D.

No. 1 on 1890 Creek roll, page 231, as Henarhar Chockney.

Aug. 10, 1905. No. 1 dled. March 3, 1902: Proof to L. O.

Citizenship certificate issued for No. 1 May 23, 1901.

Enrollment of No. 8051 hereon approved by the Secretary of Interior March 28, 1901.

May 29, 1901.

General warranty deed.

This indenture, made and entered into this 21st day of July, 1905, by and between Marchey Armstrong, sole heir of Sak pa yekca (meaning Armstrong in Indian), deceased, and _____ of _____, party of the first part, and U. S. Cate of Wewoka, I. T., party of the second part.

Witnesseth: That the said part -- of the first part, for and in consideration of the sum of two hundred and fifty dollars in hand paid, the receipt of which is hereby acknowledged, do -- hereby grant, bargain, sell, convey, and confirm unto said party of the second part the following described real estate and premises situate in the Creek Nation, and within the limits of the Indian Territory, to-wit:

Southwest quarter of the southeast quarter, and the west half of the southeast quarter of the southeast quarter, and the west half of the west half of the east half of the southeast quarter of the southeast quarter, all in section eight, township seven north, range eight east, together with all the improvements thereon, and the appurtenances and immunities thereunto belonging or in any wise appertaining, and warrant the title to the same.

To have and to hold the said lands unto the said party of the second part, his heirs, executors, administrators, and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Witnesses:

Witnesses to mark, G. C. Crump, William Pacbot, as to—

MARCHEY (his x mark) ARMSTRONG. [SEAL.]

UNITED STATES OF AMERICA,

Indian Territory, Western Judicial District, ss:

Be it remembered, that on this day came before me, the undersigned, a notary public, within and for the Western Judicial District of Indian Territory, aforesaid, duly commissioned and acting as such, Marchey Armstrong to me personally well known as one of the parties grantor in the within and foregoing deed of conveyance, and stated that he executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such notary public on this 21st day of July, 1905.

[SEAL.]

GEO. C. CRUMP,
Notary Public.

(My commission expires 2/3/1907.)

27 (Endorsed on back:) 3989. Warranty deed. From Marchey Armstrong to U. S. Cate. This instrument is to be recorded. Indian Territory, Western District, at Wewoka, Ind. Ter. I hereby certify that this instrument was filed for record in my office on Jul. 21, 1905, at 2 o'clock, p. m., and is duly recorded in record G, page 300. R. A. Bayne, deputy clerk & ex-officio recorder. (Seal.)

No. _____. Book _____. Page _____.

Quit claim deed.

This indenture made this 30th day of January, A. D. 190—, between R. M. McFarlin and I. M. McFarlin, husband and wife of the first part, and Harry H. Rogers, of the second part, witnesseth, that the said party of the first part, in consideration of the sum of one and no/100 dollars to us paid, the receipt whereof is hereby acknowledged, have remised, released, conveyed, and quit claimed, and by these presents does quit claim unto the said party of the second part and to his heirs and assigns forever all our right, title, interest, estate, claim, and demand, both at law and equity, or in and to all the following property, to-wit:

The southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the west half (W. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the west half (W. $\frac{1}{2}$) of the west half (W. $\frac{1}{2}$) of the east half (E. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of section eight (8), township seven (7) north, range eight (8) east, in the county of Hughes and State of Oklahoma, together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold the above described premises unto the said Harry H. Rogers, heirs and assigns; so neither we, the said R. M. McFarlin or I. M. McFarlin or any person in our name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall be these presents be excluded and forever barred.

In witness whereof, the said party of the first part has hereunto set _____ hand and seal the day and year first above written.

R. M. McFARLIN.

I. M. McFARLIN.

Witnesses:

_____,
_____.28 STATE OF OKLAHOMA, *Hughes County* as:

Before me, H. G. Barnard, a notary public in and for said county and State, on this 30th day of January, 1908, personally appeared R. M. McFarlin and I. M. McFarlin to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

[SEAL.]

H. G. BARNARD,

Notary Public.

My commission expires 2/26, 1910.

Filed for record in register of deed's office _____.

(Endorsed on back:) 2825. Warranty deed. From R. M. McFarlin and wife to Harry H. Rogers. State of Oklahoma, county of

Hughes, ss. I hereby certify that this instrument was filed for record on 10 day of Feb., A. D. 1909, at 2.40 o'clock p. m., and duly recorded in book F of _____ of page 157. C. C. Leath, register of deeds. By _____, deputy. Fee \$1.00. (Seal.) H. H. Rogers. 13557.

Quit claim deed.

This indenture made this 2d day of April, A. D. 1908, between James A. Chapman and Leta M. Chapman, of Holdenville, Oklahoma, of the first part, and Harry H. Rogers, of the second part, witnesseth, that the said party of the first part, in consideration of the sum of one and no/100 dollars to us paid, the receipt whereof is hereby acknowledged, have remised, released, conveyed, and quit claimed, and by these presents does quit claim unto the said party of the second part and to _____ heirs and assigns forever all our right, title, interest, estate _____ claim and demand, both at law and equity, or, in and to all the following property, to-wit:

The west half (W. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the west half (W. $\frac{1}{2}$) of the west half (W. $\frac{1}{2}$) of the east half (E. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the west half (W. $\frac{1}{2}$) of the west half (W. $\frac{1}{2}$) of the east half (E. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the west half (W. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the east half (E. $\frac{1}{2}$) of the east half (E. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and the east half (E. $\frac{1}{2}$) of west half (W. $\frac{1}{2}$) of east half (E. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of southeast quarter (SE. $\frac{1}{4}$) of section eight (8), township seven (7) north, range eight (8) east, together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold the above described premises unto the said Harry H. Rogers, heirs and assigns; so neither we, the said James A. Chapman, or Leta M. Chapman, or any person in our name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set our hand and seal the day and year first above written.

JAMES A. CHAPMAN.
LETA M. CHAPMAN.

Witness:

STATE OF OKLAHOMA, *Hughes County*, ss:

Before me, William M. Taylor, a notary public in and for said county and State, on this 2d day of April, 1908, personally appeared James A. Chapman and Leta M. Chapman, husband and wife, to me

known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

[SEAL.]

WILLIAM M. TAYLOR,
Notary Public.

My commission expires Apr. 17, 1909.

(Endorsed on back:) 2823. Quit claim deed. From James A. Chapman to Harry H. Rogers. State of Oklahoma, county of Hughes, ss. I hereby certify that this instrument was filed for record on the 10 day of Feb., A. D. 1909, at 2.40 o'clock p. m., and duly recorded in book F of ———, on page 156. C. C. Leath, register of deeds. Recorder's fee, \$1.00. (Seal.) H. H. Rogers. 13555.

No. 5018.

Warranty deed—Statutory form.

STATE OF OKLAHOMA, *Hughes County*, ss:

Know all men by these presents: That R. M. McFarlin and
30 Ida McFarlin, his wife, & J. A. Chapman and Leta M. Chapman, his wife, parties of the first part, in consideration of the sum of nineteen hundred & no/100 dollars in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto Walter Ferguson the following described real property and premises, situate in Hughes County, State of Oklahoma, to wit: Lots five (5) and eight (8) of section eight (8), township seven (7) north, range eight (8) east, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever, free, clear, and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature.

Signed and delivered this 27th day of November, 1909.

R. M. MCFARLIN.
IDA M. MCFARLIN.
J. A. CHAPMAN.
LETA M. CHAPMAN.

Witness:

STATE OF OKLAHOMA, *Hughes County*, ss:

Before me, a notary public in and for said county and State, on the 27th day of November, 1909, personally appeared R. M. McFarlin and Ida M. McFarlin, his wife, J. A. Chapman and Leta M.

Chapman, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

[SEAL.]

H. G. BARNARD,
Notary Public.

My commission expires 2/26, 1910.

(Endorsed on back:) Warranty deed (statutory form). State of Oklahoma, Hughes County, ss. I hereby certify that this instrument was filed for record on the 5th day of Jan., 1910, at 10.40 o'clock a. m., and duly recorded in deed book 3 on page 319. C. C. Leach, register of deeds. State of Oklahoma, County of Hughes, ss. I, A. J. Johnson, register of deeds in and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now of record in my office in book 3 of deeds at page 319. Witness my hand and official seal this 11th day of July, 1914. A. J. Johnson, register of deeds. (Seal.)

31

No. 3574.

Warranty deed—Statutory form.

STATE OF OKLAHOMA, *Hughes County*, ss:

Know all men by these presents: That Harry H. Rogers and Anna H. Rogers, husband and wife, parties of the first part, in consideration of the sum of three hundred seventy-five and no/100 dollars in hand paid, the receipt of which is hereby acknowledge, do hereby grant, bargain, sell, and convey unto F. M. Hale the following described real property and premises, situate in Hughes County, State of Oklahoma, to wit: West half of southeast quarter of southeast quarter, and west half of the west half of the east half of the southeast quarter of the southeast quarter, all in section eight (8), township seven (7) north, range eight (8) east, containing 25 acres, more or less, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said parties of the second part, his heirs and assigns forever, free, clear, and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature.

Signed and delivered this 19th day of May, 1909.

HARRY H. ROGERS.
ANNA H. ROGERS.

Witness:

STATE OF OKLAHOMA, *Hughes County*, ss:

Before me, a notary public in and for said county and State, on the 19th day of May, 1909, personally appeared Harry H. Rogers and Anna H. Rogers, husband and wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year above written.

[SEAL.]

E. J. EUBANKS,
Notary Public.

My commission expires 2-13, 1912.

(Endorsed on back:) No. 3574. Warranty deed (statutory form). From Harry H. Rogers and Anna H. Rogers to F. M. Hale. State of Oklahoma, Hughes County, ss. I hereby certify that this instrument was filed for record on the 24th day of May, 1909, at 3.20 o'clock p. m., and duly recorded in deed book 1, on page 437. C. C. Leach, register of deeds. State of Oklahoma, county of Hughes, ss. 32 I, *Hughes*, register of deeds in and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now of record in my office, in book 1 of deeds, at page 437. Witness my hand and official seal this 11th day of July, 1914. A. J. Johnson, register of deeds. (Seal.)

No. 5039.

Warranty deed—Statutory form.

STATE OF OKLAHOMA, *Hughes County*, ss:

Know all men by these presents: That Harry H. Rogers and Anna H. Rogers, husband and wife, parties of the first part, in consideration of the sum of four hundred and no/100 dollars in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto F. M. Hale the following described real property and premises, situate in Hughes County, State of Oklahoma, to wit: Southwest quarter of southeast quarter section eight (8), township seven (7) north, range eight (8) east, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever, free, clear, and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other leins and encumbrances of whatsoever nature.

Signed and delivered this 13th day of December, 1909.

HARRY H. ROGERS.
ANNA H. ROGERS.

Witness:

STATE OF OKLAHOMA, *Hughes County, ss:*

Before me, a notary public in and for said county and State, on the 13th day of December, 1909, personally appeared Harry H. Rogers and Anna H. Rogers, husband and wife, and to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year above written.

[SEAL.]

E. J. EUBANKS,

Notary Public.

My commission expires 2/13, 1912.

(Endorsed on back:) Warranty deed (statutory form). State of Oklahoma, Hughes County, ss. I hereby certify that this
33 instrument was filed for record on the 7th day of January, 1910, at 10.40 o'clock a. m., and duly recorded in deed book 3, on page 327. C. C. Leath, register of deeds. State of Oklahoma, county of Hughes, ss. I, A. J. Johnson, register of deeds in and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now of record in my office, in book 3 of D, at page 327. Witness my hand and official seal this 11th day of July, 1914. A. J. Johnson, register of deeds. (Seal.)

Book ———, page ———.

Quit claim deed with relinquishment of dower.

Know all men by these presents: That U. S. Cate, of Wewoka, Indian Territory, and Estella B. Cate, his wife, party of the first part, in consideration of the sum of five hundred dollars to me paid by Harry H. Rogers, of Wewoka, Indian Ter., party of the second part, the receipt of which is hereby acknowledged, do hereby bargain, convey, remise, release, and forever quit claim unto the said Harry H. Rogers, his heirs and assigns, a certain lot, parcel, or tract of ground situated in Creek Nation, Indian Territory, described as follows, to wit: Southwest quarter of the southeast quarter and the west half of the southeast quarter of the southeast quarter and the west half of the west half of the east half of the southeast quarter of the southeast quarter, all in section 8, township 7 north, range 8 east, with all privileges and appurtenances thereto belonging.

To have and to hold the above-released premises to the said party of the second part, his heirs and assigns, to his and their use and behoof forever; and I, the said U. S. Cate, for myself and my heirs, executors, and administrators, do covenant with the said party of the second part, his heirs and assigns, that the said property is free from all incumbrance made or suffered by me, except ———, which said encumbrance is hereby assumed and accepted by the said party of the second part; that I will, and my heirs, executors, and admin-

istrators shall, warrant and defend the same unto the said party of the second part, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me, but against none other.

And for the consideration aforesaid, and for divers other good and valuable considerations, I, Estella B. Cate, wife of the said U. S.

Cate, do hereby release and quit claim unto the party of the
34 second part, his heirs and assigns forever, all of my right, claim, or possibility of dower in or out of the aforesaid property.

Witness our hands and seals on this the 14th day of February, 1907.

ESTELLA H. CATE. [SEAL.]

U. S. CATE. [SEAL.]

Witness:

UNITED STATES OF AMERICA,

Indian Territory, Western District, ss:

On this 16th day of February, 1907, personally appeared before me, a notary public within and for the above-named district, U. S. Cate, to me personally well known as the person subscribing to the foregoing instrument and acknowledged that he had subscribed and executed the same for the consideration and purposes therein set forth as his free, voluntary act and deed.

And I further certify that on this day voluntarily appeared before me, the undersigned notary public, Estella B. Cate, wife of the said U. S. Cate, well known to me as the person whose name appears upon the within and foregoing deed, and in the absence of her said husband declared that she had, of her own free will, signed the relinquishment of dower therein expressed for the purposes and consideration therein contained and set forth, without compulsion or undue influence from her said husband.

Witness my hand and seal as such notary public on the day and year first above mentioned.

[SEAL.]

JOSEPH C. MORTON,
Notary Public.

My commission expires Feb. 29, 1908.

(Endorsed on back:) 11244. Warranty deed. From U. S. Cate and wife to Harry H. Rogers. Indian Territory, Western District, at Wewoka, Ind. Ter. I hereby certify that this instrument was filed for record in my office on Feb. 18, 1907, at 8 o'clock a. m., and is duly recorded in record F, page 588. R. A. Bayne, deputy clerk & ex officio recorder. (Seal.)

Quit claim deed.

This indenture made this 11th day of November, A. D. 1906, between the Creek Investment Company, a copartnership composed

of Chas. Rider and Alfred F. Goat, of the first part, and Harry H. Rogers, of the second part, witnesseth that the said party of the first part, in consideration of the sum of one dollars to them paid, the receipt whereof is hereby acknowledged, have remised, released, conveyed, and quit claimed, and by these presents do quit claim unto the said party of the second part, and to his heirs and assigns forever, all their right, title, interest, estate ——— claim and demand, both at law and equity, of, in, and to all the following property, to wit: Lots five (5) and eight (8), southwest quarter of southeast quarter, west half of southeast quarter of southeast quarter, west half of west half of east half of southeast quarter of southeast quarter, all in section eight (8), township seven (7) north, range eight (8) east, Hughes County, Oklahoma, same being no part of the homestead of Chas. Rider or Alfred F. Goat, together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold the above described premises unto the said Harry H. Rogers, his heirs and assigns; so neither they, the said Chas. Rider or Alfred F. Goat, or any person in their name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

In witness whereof, the said party of the first part has hereunto set their hands and seal the day and year first above written.

CHAS. RIDER.
ALFRED F. GOAT.

Witnesses:

_____,
_____.

STATE OF OKLAHOMA, *Hughes County, ss:*

Before me, H. B. Drake, a notary public in and for said county and State, on this 11th day of November, 1908, personally appeared Chas. Rider and Alfred Goat, partners, coming the Creek Investment Company, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

[SEAL]

H. B. DRAKE,
Notary Public.

My commission expires Sept. 4, 1912.

(Endorsed on back:) 2517. Quit claim deed, compared. From the Creek Investment Company to Harry H. Rogers, State of Oklahoma, county of Hughes, ss. I hereby certify that this instrument was filed for record the 24 day of Dec., A. D. 1908, at 11:25 o'clock a. m., and duly recorded in deed book F, on page 197. C. C. Leath, register of deeds. Recorder's fees, \$1.00. (Seal) 10696.

Quit claim deed.

This indenture made this 8th day of February, A. D. 1909, between Wm. A. Eubank, of the first part, and Harry H. Rogers, of the second part. Witnesseth that the said party of the first part, in consideration of the sum of one dollar and other considerations to me paid, the receipt whereof is hereby acknowledged, have remised, released, conveyed, and quit claimed, and by these presents does quit claim unto the said party of the second part and to his heirs and assigns forever all my right, title, interest, estate, claim, and demand, both at law and equity, or, in and to all the following property, to-wit: The W. 2 of the W. 2 of the E. 2 of the SE. 4 of the SE. 4 and the W. 2 of the SE. 4 of the SE. 4 and the E. 2 of the E. 2 of the SW. 4 of the SE. 4 and the E. 2 of the W. 2 of the E. 2 of the SW. 4 of the SE. 4 of section eight (8) and the W. 2 of the SW. 4 of the SE. 4 and the W. 2 of the W. 2 of the E. 2 of the SW. 4 of the SE. 4 and lot five (5) and lot eight (8) of section eight (8) township seven (7) north, range eight (8) east, of the Indian base and meridian in Hughes County, Oklahoma, together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold the above described premises unto the said Harry H. Rogers, his heirs and assigns; so neither I, the said Wm. A. Eubank, or any person in my name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set their hands the day and year first above written.

WM. A. EUBANK.
JENNIE C. EUBANK.

Witnesses:

_____,
_____.

STATE OF OKLAHOMA, *Hughes County*, ss:

Before me, Ralph W. Widner, a notary public in and for said county and State, on this 8th day of February, 1909, personally appeared Wm. A. Eubank and Jennie C. Eubank, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

[SEAL.]

RALPH W. WIDNER,
Notary Public.

My commission expires August 31st, 1911.

37 (Endorsement on back:) No. 2827. Quit claim deed. Wm. A. Eubank to Harry H. Rogers. State of Oklahoma, county of Hughes, ss. I hereby certify that this instrument was filed for record on 10 day of Feb., A. D. 1909, at 2.40 o'clock p. m., and duly recorded in book F of _____ of page 158. C. C. Leath, register of deeds. By _____ deputy. Fee, \$1.00. H. H. Rogers. 13559. (Seal.)

Quit claim deed.

This indenture made this 11th day of November, A. D. 1908, between Alfred F. Goat of the first part, and Harry H. Rogers of the second part, witnesseth, that the said party of the first part, in consideration of the sum of one and no/100 dollars to him paid, the receipt whereof is hereby acknowledged, have remised, released, conveyed, and quit claimed, and by these presents do quit claim unto the said party of the second part, and to his heirs and assigns forever, all his right, title, interest, estate _____ claim and demand, both at law and equity, of, in, and to all the following property, to wit: Lots five (5) and eight (8), south west quarter of southeast quarter, west half of southeast quarter of southeast quarter, and west half of west half of east half of southeast quarter of southeast quarter, all in section eight (8), township seven (7) north, range eight (8) east, Hughes County, Oklahoma, same being no part of the homestead of Alfred F. Goat, together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold the above-described premises unto the said Harry H. Rogers, his heirs and assigns, so neither he, the said Albert F. Goat, or any person in his name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ALFRED F. GOAT.

Witnesses:

STATE OF OKLAHOMA, *Hughes County, ss:*

Before me, Chas. Rider, a notary public in and for said county and State, on this 11th day of November, 1908, personally appeared
38 Alfred F. Goat, and _____ to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.
[SEAL.]

CHAS. RIDER,
Notary Public.

My commission expires July 16th, 1910.

(Endorsed on back:) 2518. Compared. Quit claim deed. From Alfred F. Goat to Harry H. Rogers. City. State of Oklahoma, county of Hughes, ss. I hereby certify that this instrument was filed for record the 24 day of Dec., A. D. 1908, at 11.25 o'clock a. m., and duly recorded in deed book F, on page 128. C. C. Leach, register of deeds. Recorder's fees, \$100. (Seal.)

General warranty deed.

This indenture made and entered into this 5th day of July, one thousand nine hundred and five, by and between Marchey Armstrong, sole heir at law of Heneher Hockokney, deceased, of Emahaka, I. T., party of the first part, and U. S. Cate, of Wewoka, I. T., party of the second part—

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred fifty dollars in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, convey, and confirm unto said party of the second part the following described real estate and premises situate in the Creek Nation and within the limits of the Indian Territory, to wit: The southwest quarter of the southeast quarter and the west half of the southeast quarter of the southeast quarter and the west half of the west half of the east half of the southeast quarter of the southeast quarter, all in section eight, township seven north, range eight east, together with all the improvements thereon and the appurtenances and immunities thereunto belonging or in any wise appertaining, and warrant the title to the same.

To have and to hold the said lands unto the said party of the second part, his heirs, executors, administrators, and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Witnesses to mark, William Factor, Harry H. Rogers, as to

MARCHEY (his x mark) ARMSTRONG. [SEAL.]

39 UNITED STATES OF AMERICA,

Indian Territory, Western Judicial District, ss:

Be it remembered that on this day came before me, the undersigned, a notary public within and for the Western Judicial district of Indian Territory aforesaid, duly commissioned and acting as such, Marchey Armstrong, to me personally well known as party grantor in the within and foregoing deed of conveyance, and stated that he executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such notary public on this 5th day of July, 1905.

[SEAL.]

GEO. C. CRUMP,
Notary Public.

My commission expires 2/3/1907.

(Endorsed on back:) 3874. Warranty deed. From Marchey Armstrong to U. S. Cate. This instrument is to be recorded. In-

dian Territory, Western District, at Wewoka, Ind. Ter. I hereby certify that this instrument was filed for record in my office on Jul. 3, 1905, at 4 o'clock p. m., and is duly recorded in record C, page 386. R. A. Bayne, deputy clerk & ex officio recorder. (Seal.)

Know all men by these presents: That I, Marchy Armstrong, of Wewoka, Indian Territory, sole heir at law of Henehar Hockokney, deceased, who died intestate, for and in consideration of the sum of two hundred and fifty dollars, to me in hand paid [] U. S. Cate, of Wewoka, Indian Territory, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said U. S. Cate the following-described land, being and situated in the Muskogee or Creek Nation, Indian Territory, and described as follows, to wit: Southwest quarter of the southeast quarter of section eight, township seven (7), range eight, and the west half of the southeast quarter of the southeast quarter of section eight, township seven, range eight.

Together with all the improvements thereon, and the appurtenances thereunto belonging or in any wise appertaining, and warrant the title to same.

To have and to hold the said lands unto the said U. S. Cate, his heirs, executors, administrators, and assigns forever.

In witness whereof I have hereunto set my hand and seal this the 24th day of June, 1905.

MARCHEY (his x mark) ARMSTRONG.

Witnesses to mark:

G. C. CRUMP,
WILLIAM FACTOR.

40 UNITED STATES OF AMERICA,

Indian Territory, Western District:

Be it remembered that on this 24th day of June, 1905, before me, Geo. C. Crump, an acting and duly commissioned notary public within and for the Western District of the Indian Territory, appeared in person before me Marchy Armstrong, to me known to be the party who signed and executed the above and foregoing deed of conveyance and acknowledged that he had so signed and executed the same for the consideration and purposes therein mentioned and set forth.

Given under my hand and seal this 24th day of June, 1905.

[SEAL.]

Geo. C. CRUMP,
Notary Public.

Commission ex. 2/3/1907.

(Endorsed as follows:) 3795. Warranty deed. Marchey Armstrong to U. S. Cate. City. This instrument is to be recorded. Indian Territory, Western District, at Wewoka, Ind. Ter. I hereby certify that this instrument was filed for record in my office on Jul. 26, 1905, at 8 o'clock a. m. and is duly recorded in record E, page 173. R. A. Bayne, deputy clerk & ex officio recorder. (Seal.)

Certified copy of deeds from the register of deeds' office, Seminole County, Oklahoma:

Warranty deed with relinquishment of dower.

Know all men by these presents: That Marcge Yekcha, sole heir of Henekar Hockokney, of Wewoka, Indian Territory, and a single man, party of the first part, in consideration of the sum of five hundred (\$500.00) dollars to me paid by Planters' Trust Company, a corporation, of Holdenville, I. T., parties of the second part, the receipt of which is hereby acknowledged, do hereby bargain, grant, sell, and convey unto the said Planters' Trust Company, their heirs and assigns, a certain lot, parcel, or tract of ground situated in the Creek Nation, Indian Territory, described as follows, to wit:

West half of west half of east half of southeast quarter of southeast quarter and west half of southeast quarter of southeast quarter and east half of east half of southwest quarter of southeast quarter and east half of north half of east half of southwest quarter of southeast quarter and west half of southwest quarter of southeast quarter and west half of west half of east half of southwest quarter
41 of southeast quarter and lots five (5) and eight (8) of section eight (8), twp. seven (7) north, range eight (8) E. with all privileges and appurtenances thereto belonging.

To have and to hold the aforegranted premises unto the said party of the second part, his heirs and assigns, in fee simple forever; and I, the said Marche Yekcha, for myself and my heirs, executors, and administrators, do covenant with the said party of the second part, his heirs, and assigns, that the said property is free from all incumbrance; that I have a good right to sell and convey the said property; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all persons.

Witness our hands and seals on this the 18th day of June, 1906.

MARCHE YEKCHA (his x mark). [SEAL.]

Witness:

HOUSTON MILLER (Inter.).

J. O. CHAPMAN.

UNITED STATES OF AMERICA,

Indian Territory, Western ——— District, as:

On this 18th day of June, 1906, personally appeared before me, a notary public within and for the above named district, Marche Yekcha, to me personally well known as the person subscribing to the foregoing instrument, and acknowledged that he had subscribed and executed the same for the consideration and purposes therein set forth as his free, voluntary act and deed.

Witness my hand and seal as such notary public on the day and year first above mentioned.

[SEAL.]

JOHN D. BOXLEY,
Notary Public.

My commission expires 2-3-1909.

Filed for record in the U. S. clerk's office June 19th, 1906, 8 a. m., recorded in book K, page 588. R. A. Bayne, deputy clerk and ex-officio recorder.

Quit claim deed.

This indenture, made this 11th day of March, 1907, between the Planters Trust Company, of Holdenville, Ind. Ter., party of the first part, and R. M. McFarlin and J. A. Chapman, of Holdenville, Ind. Ter., parties of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the parties of the second part, receipt of which
42 is hereby acknowledged, and for other good and valuable considerations, has remised, released, sold, conveyed, and quit claimed, and by these presents does remise, release, sell, convey, and quit claim unto the said parties of the second part, their heirs and assigns, forever all the right, title, interest, claim, and demand which said party of the first part has in and to the following described tracts of land or improvements, lying and being situate in the Creek Nation, Western District of the Indian Territory, particularly described as follows, to wit:

The east half of section seventeen (17), tp. eleven (11) N. of range nine (9) E., and the south half of the northeast fourth of sec. five (5), tp. seven (7) N. of range eight (8) E., and the west half of the southeast fourth of sec. twenty-one (21), tp. eight (8) N., R. eight (8) E., and the southeast fourth of sec. thirteen (13), tp. ten (10) N. of range eleven (11) E., and the west half of the southeast fourth, the southwest fourth of the northeast fourth of section three (3), and the northwest fourth of the northeast fourth of sec. ten (1), tp. six (6) N. of range nine (9) E., and the south half of the northeast fourth, and lots one (1) and twp. (2) of sec. one (1), tp. six (6) N. of range eight 8 E., the east half of the southwest fourth and the northwest fourth of the southwest fourth, the southwest fourth of the southeast fourth of sec. twenty-eight (28), tp. eighteen (18) N. of range eleven (11) E., and lots three (3) and four (4), sec. thirty (30), tp. ten (10) N. of range nine (9) east, and lots three (3) and four (4), or the north half of the northwest fourth of sec. one (1), tp. nine (9) N. of range eight (8) east, and the south half of the southeast fourth of sec. thirty-six (36), tp. ten (10) N. of range eight (8) E., and the west half of the west half of east half of southeast fourth of the southeast fourth, and west half of the southeast fourth of the southeast fourth, and the east half of east half of the southwest fourth of the southeast fourth, and east half of north half of east half of

southwest fourth of southeast fourth, and west half of west half of east half of southwest fourth of southeast fourth, and lots five (5) and eight (8) of sec. eight (8), tp. seven (7) N. of range eight (8) east.

To have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or appertaining, and all the estate, right, title, interest, and claim whatever of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set its seal and caused these presents to be signed by its president and attested by its secretary this 11th day of March, 1907.

[COR. SEAL]

Attest:

PLANTERS TRUST COMPANY,
By H. B. GOOCH, *President*.
H. V. SCHAFF, *Secretary*.

United States of America, Western District for the Indian Territory.

Be it remembered that on this day personally appeared before me the undersigned, a notary public with and for the Western District of the Indian Territory, duly commissioned and acting, H. B. Gooch and H. V. Schaff, to me well known as the president and secretary of the Planters Trust Company, a corporation, and being by me first duly sworn, upon their oaths say that the said H. B. Gooch is president and the said H. V. Schaff is secretary of the Planters Trust Company, the grantor in the foregoing deed, and that the seal affixed to said deed is the corporate seal of said corporation and was affixed to said by and under authority of the board of directors thereof, and they each stated and acknowledged to me that they had executed the said deed for the said corporation in their said official capacities and under authority of the board of directors of said corporation for the purposes and consideration therein set forth and mentioned, and I do hereby so certify.

Witness my hand and official seal this 11th day of March, 1907.

[SEAL.]

H. G. BARNARD,
Notary Public.

My com. expires 2/26/1910.

Filed for record May 2, 1907, at 8 a. m. and recorded in book L, page 381. R. A. Bayne, recorder.

Warranty deed with relinquishment of dower.

Know all men by these presents: That Marchy Armstrong, sole heir of Henehar Hockokney, of Wewoka, Indian Territory, party of the first part, in consideration of the sum of eight hundred and fifty dollars to me paid by Alfred F. Goat, of Holdenville,
44 I. T., party of the second part, the receipt of which is hereby

acknowledged, do hereby bargain, grant, sell, and convey unto the said Alfred F. Goat, his successors, heirs, and assigns, a certain lot, parcel, or tract of ground situated in the Creek Nation, Indian Territory, described as follows, to wit: The east $\frac{1}{2}$ of the southwest $\frac{1}{4}$, the southwest $\frac{1}{4}$ of southeast $\frac{1}{4}$ and the west half of the southeast $\frac{1}{4}$ of southeast $\frac{1}{4}$ & lots (5) and (8) of section eight (8), township seven (7) north, range eight (8) east, of the Indian base & meridian, containing one hundred and sixty acres (160) more or less, according to the Government survey thereof, with all privileges and appurtenances thereto belonging.

To have and to hold the aforegranted premises unto the said party of the second part, his heirs and assigns, in fee simple forever; and I, the said Marchy Armstrong, for himself & his heirs, executors, and administrators, do covenant with the said party of the second part, his heirs and assigns, that the said property is free from all incumbrance; that I have a good right to sell and convey the said property and that I will, and my heirs, executors, and administrators shall warrant and defend the same unto the said party of the second part, his heirs and assigns forever, against the lawful claims and demands of all persons.

Witness our hands and seals this the 17th day of August, 1907.

MARCHY ARMSTRONG (his X mark). [SEAL.]

Witness:

ROMAN GOAT.

United States of America, Indian Territory, Western Judicial District, ss:

On this 17th day of August, 1907, personally appeared before me, a notary public within and for the above named district, Marchy Armstrong, sole heir of Henehar Hockokney, to me personally well known as the person subscribing to the foregoing instrument, and acknowledged that he had subscribed and executed the same for the consideration and purposes therein set forth as his free and voluntary act and deed.

Witness my hand and seal as such notary public the day and year first above mentioned.

[SEAL.]

CHAS. RIDER,
Notary Public.

My commission expires July 16th, 1910.

Filed for record on this 19 day of Aug., 1907, at 7 o'clock a. m., and recorded in book U, page 511. R. A. Bayne, deputy clerk & ex officio recorder.

45

Warranty deed with relinquishment of dower.

Know all men by these presents: That Marche Yekcha, of Wewoka, Indian Territory, party of the first part, in consideration of the sum of nine hundred dollars, to me paid by Wm. A. Eubank, of Holden-

ville, I. T., party of the second part, the receipt of which is hereby acknowledged, do hereby bargain, grant, sell, and convey unto the said Wm. A. Eubank, his heirs and assigns, a certain lot, parcel, or tract of ground situated in the Creek Nation, Indian Territory, described as follows, to wit: W. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section eight (8), twp. seven (7) north, range eight (8) east, and W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and W. $\frac{1}{4}$ of W. $\frac{1}{4}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and lot five (5) and lots eight (8) of section eight (8), twp. seven (7) north, range eight (8) east of the I. B. & M., containing 160.39 acres, according to the United States survey thereof, with all privileges and appurtenances thereto belonging.

To have and to hold the aforegranted premises unto the said party of the second part, his heirs and assigns, in fee simple forever; and I, the said Marche Yekcha for myself and my heirs, executors, and administrators, do covenant with the said party of the second part, his heirs and assigns, that the said property is free from all incumbrance; that I have a good right to sell and convey the said property, and that I will and my heirs, executors, and administrators shall warrant and defend the same unto the said party of the second part, his heirs and assigns forever, against the lawful claims and demands of all persons.

Witness our hands and seals this the 9th day of August, 1907.

MARCHIE (his x mark) YEKCHA. [SEAL.]

Witness:

J. N. MARKS,

ALFRED FRANK.

UNITED STATES OF AMERICA,

Indian Territory, Western Judicial District, ss:

On this 9th day of August, 1907, personally appeared before me, a notary public within and for the above-named district, Marche Yekcha, to me personally well known as the person subscribing to the foregoing instrument, and acknowledged that he
46 ing to the foregoing instrument, and acknowledged that he had subscribed and executed the same for the consideration and purposes therein set forth as his free and voluntary act and deed.

Witness my hand and seal as such notary public, the day and year first above mentioned.

[SEAL.]

LLOYD THOMAS,

Notary Public.

My commission expires May 13, 1911.

Filed for record on this 10 day of August, 1907, at 7.45 o'clock a. m., and recorded in book U, page 390. R. A. Bayne, deputy clerk & ex-officio recorder.

Warranty deed.

Know all men by these presents: That I, Marchey Armstrong, the legal and only heir of Henehar Kochokney, citizens by blood of the

Creek Nation, and duly enrolled as such, for and in consideration of the sum of three hundred (\$300.00) dollars to him paid by the Creek Investment Co., of Holdenville, I. T., party of the second part, receipt of which is hereby acknowledged, hereby bargain, sell, and convey unto the party of the second part, their heirs and assigns, the following described lands, to wit: The W. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, & the W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, E. $\frac{1}{2}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{2}$ of W. $\frac{1}{2}$ of E. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section eight (8), township seven (7) N., range eight (8) east, containing forty (40) acres, more or less, in the Creek Nation, Indian Territory, the said lands belonging to the estate of Henehar Kochokney, deceased, who was a citizen by blood of the Creek Nation, being a part of the allotment of the lands of the Creek Nation due to the said deceased by the Commission to the Five Civilized Tribes. And I represent that I am the only surviving heir of the said deceased, and as such have lawful control over said land, and to have and to hold the aforegranted premises unto the said party of the second part in fee simple forever; and the said Marchey Armstrong for himself and his heirs, executors, and administrators do covenant with the said party of the second part, that he is lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that he has good right to sell and convey the same to the said party of the second part, their heirs and assigns, as aforesaid, and that he and his heirs, executors, and administrators shall warrant and
 47 defend the same unto the said party of the second part, their heirs and assigns, forever against the lawful claims and demands of all persons.

Witness our hands and seals on this 23rd day of June, 1906.

MARCHEY ARMSTRONG (his X mark). [SEAL]
Heir of Henehar Kochokney.

Witness:

E. C. ROBERTS,
 ROMAN GOAT.

UNITED STATES OF AMERICA,

Indian Territory, Western Judicial District:

On this 23rd day of June, 1906, personally appeared before me, a notary public within and for the above-named district, Marchey Armstrong, to me personally well known as the person named in the foregoing instrument as grantor, and acknowledged that he had subscribed and executed the same for the consideration and purposes therein set forth as his free voluntary act and deed.

Witness my hand and seal as such notary public on the day and year first above mentioned.

[SEAL]

V. W. SNIDER,
Notary Public.

My com. expires Aug. 17, 1908.

Filed for record June 25, 1906, at 8 a. m., recorded in book L, page 123. R. A. Bayne, recorder.

Certificate of true copy.

STATE OF OKLAHOMA, *County of Seminole, ss:*

I, W. H. Dunaway, register of deeds in and for the county of Seminole and State of Oklahoma, do hereby certify that the instruments hereto attached are full, true, and correct copies of (a) warranty deeds, recorded in U. S. clerk's office, book "K," page 588; (b) quit-claim deed, recorded in U. S. Clerk's office, book "L," page 381; (c) warranty deed, filed in office of U. S. clerk's office, recorded in book "U," page 511; (d) warranty deed, recorded in U. S. clerk's office in book "U," page 390; (e) warranty deed, recorded in U. S. clerk's office in book "L," page 123, as the same appears from the records in my office.

Witness my hand and seal at Wewoka, in said county and State, this 11th day of July, 1914.

[SEAL.]

W. H. DUNWAY,
Register of Deeds.

(Endorsed:) Filed Jul. 13, 1914. R. P. Harrison, clerk U. S. District Court, Eastern District of Oklahoma.

48 And to wit, on the 13th day of July, A. D. 1914, the following proceeding was had in this cause. The Honorable Ralph E. Campbell, presiding:

DECREE.

In the United States District Court for the Eastern District of Oklahoma.

Be it remembered that on this 13th day of July, 1914, the same being one of the regular judicial days of the June, 1914, term of this court begun and held at McAlester, Oklahoma, this cause came regularly on to be heard in accordance with a prior assignment, the complainant being present by its solicitor of record, C. C. Herndon, special assistant to the United States attorney for the Eastern District of Oklahoma, and the defendants being present by their solicitors of record, Gibson & Thurman and Harry H. Rogers, and thereupon the complainant and the defendants presented to the court an agreed statement of facts of this cause, upon which it was stipulated the court might rest its determination of the questions of fact and law raised under the pleadings herein, saving, however, to the parties, respectively, the right to introduce at the trial of the cause relevant and competent evidence to show the quantum of Seminole Indian blood possessed by one Eliza, the mother of one Marche Kackohe, such evidence to be subject to the usual objections for irrelevancy and incompetency.

And thereupon the complainant offered the testimony of three witnesses, to wit, Jacob Harrison, Concharty, and Catcha Holatka,

to show that said witnesses were personally acquainted with the said Eliza during her lifetime and personally knew her to be a woman of the full Seminole Indian blood, and the said offer of testimony so made by the complainant being objected to by the defendants, the objection is sustained by the court on the ground that said testimony would be irrelevant to the issues in this cause, to which action of the court in sustaining the said objection to the introduction of said testimony the complainant then and there excepted, and its exceptions are allowed.

And the court having considered the pleadings and the said agreed statement of facts, and having heard the argument of counsel thereon, and being well and sufficiently advised in the premises, finds the facts of this cause to be as stated in the said agreed statement of facts and concludes as a matter of law that Marche Yeckcha has not been and cannot be regarded as a full-blood Indian within the meaning of the acts of Congress imposing restrictions on the alienation of lands inherited by heirs who are full-blood Indians, and further concludes as a matter of law that none of the deeds attached to and made a part of the said agreed statement of facts and appearing to have been executed by the said Marche Yeckcha was executed by him at a time when the alienation of the land sought to be thereby conveyed was inhibited or restricted by the provisions of any act of Congress.

It is therefore considered, adjudged, and decreed by the court that the complainant, the United States of America, take nothing by this suit, and that the defendants go hence without day, to all of which the said complainant then and there excepted and now excepts, and its exceptions are allowed.

RALPH E. CAMPBELL, *Judge*.

And, to wit, on the 8th day of January, A. D. 1915, the complainant, United States of America, filed its petition for allowance of an appeal, together with its assignment of errors, which appeal was allowed by the court. Said petition for allowance of appeal, assignment of errors, and order allowing appeal are in words and figures as follows:

PETITION AND APPLICATION FOR APPEAL.

Comes now the United States of America, complainant in the above-entitled cause, and feeling itself aggrieved by the final decree made and entered in the above cause on the 13th day of July, 1914, does hereby, in open court, appeal from said decree and order to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons and upon the grounds specified in its assignment of errors, which is submitted and filed herewith; and said complainant prays that an appeal may be allowed and that the transcript of the record, proceedings, and papers upon which said decree and order

were based, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

W. P. MCGINNIS,

*Special Assistant to the United States Attorney,
Solicitor for Complainant.*

(Endorsed:) Filed Jan. 8, 1915, R. P. Harrison, clerk, United States District Court, Eastern District of Oklahoma.

50

ASSIGNMENT OF ERRORS.

Comes now the complainant, the United States of America, and shows that the final decree entered in the above-entitled cause on the 13th day of July, 1914, is erroneous and unjust to this complainant, and this complainant therefore now files the following assignment of errors, upon which it will rely in this appeal from said final decree for the reversal of the same.

1. The court erred in sustaining the objections made by the defendants to certain testimony offered by the complainant, to wit, the testimony of three witnesses, namely, Jacob Hanson, Concharte and Catcha Holatka, to show that said witnesses were personally acquainted with Eliza, the mother of the full-blood Indian heir, whose conveyance was in question, and personally knew her to be a woman of full Seminole Indian blood, which testimony when offered was objected to by the defendants on the ground that it was incompetent, irrelevant, and immaterial, and which objection was by the court sustained on those grounds, and to which action of the court in sustaining said objection the complainant then and there at the time excepted, and its exceptions were allowed.

2. The court erred in finding as a fact that Marche Yechtcha was not a full-blood Indian within the meaning of the acts of Congress imposing restrictions upon the alienation of lands inherited by heirs who are full-blood Indians, to which action of the court in so finding the complainant excepted, and its exception was allowed.

3. The court erred in concluding as a matter of law that Marche Yechtcha cannot be regarded as a full-blood Indian within the meaning of the acts of Congress imposing restrictions upon the alienation of lands inherited by heirs who are full-blood Indians, to which action of the court the complainant at the time excepted, and its exception was allowed.

4. The court erred in concluding as a matter of law that none of the deeds attached to and made a part of the agreed statement of facts filed in this cause and appearing to have been executed by the said Marche Yechtcha were executed by her at a time when the alienation of the lands sought to be thereby conveyed was inhibited or restricted by the provisions of any act of Congress, to which action of the court in so concluding the complainant at the time excepted, and its exception was allowed.

5. The court erred in rendering its decree herein in favor of the defendants and against the complainant, to which action of the

court the complainant at the time excepted and its exception was allowed.

6. The court erred in not rendering its decree herein in favor of the complainant and against the defendants.

7. The court erred in not finding, concluding, and holding that Marche Yachtcha was a full-blood Indian within the meaning of the acts of Congress prohibiting the alienation of lands inherited by full-blood Indian heirs from alienating the same without the approval of the Secretary of the Interior.

8. The court erred in not finding, concluding, and holding that Marche Yechtcha was a full-blood Indian heir within the meaning of the acts of Congress prohibiting the alienation of inherited lands by full-blood Indians without the approval of the probate court having jurisdiction of the settlement of the estate of the deceased allottee and ancestor of such full-blood Indian heir.

9. The court erred in not admitting in evidence the testimony offered by the complainant for the purpose of showing that the mother of Marche Yechtcha was a Seminole Indian of the full blood.

10. The court erred in not finding, holding, and concluding that Marche Yechtcha was a full-blood Indian, as shown by the rolls of Indians of the Five Civilized Tribes, made up by the Dawes Commission and approved by the Secretary of the Interior, and known as the final rolls of said tribes of Indians.

11. The court erred in not quieting the title to the lands in question in Marche Yechtcha as against the defendants or any one claiming through or under them.

52 Wherefore this complainant prays that said final decree of the court be reversed and the District Court of the United States for the Eastern District of Oklahoma be directed to set aside the decree rendered by it on the 13th day of July, 1914, and to proceed in said cause and to enter such final decree and judgment as will give to the complainant the relief prayed for in its bill.

D. H. LINEBAUGH,
United States Attorney,

W. P. MCGINNIS,
*Special Assistant to the United States Attorney,
Solicitors for Complainants.*

(Endorsed:) Filed Jan. 8, 1915, R. P. Harrison, clerk United States District Court, Eastern District of Oklahoma.

ORDER ALLOWING APPEAL.

Now comes on for hearing in open court the petition and application of the complainant, the United States of America, for appeal, and the said petition and application having been duly considered and the court being fully advised in the premises, it is therefore considered and ordered that the said petition and application be

allowed and granted, and the appeal therein prayed is this day allowed in open court.

Done in open court this, the 8th day of January, 1915.

RALPH E. CAMPBELL, Judge.

(Endorsed:) Filed Jan. 8, 1915, R. P. Harrison, clerk United States District Court, Eastern District of Oklahoma.

CITATION.

United States of America, to Walter Ferguson, T. A. Manwarring, A. A. Hatch, L. L. O'Bannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarlin, Planters Trust Company, a corporation, the Creek Investment Company, a corporation, the Oklahoma Mining and Investment Company, a corporation, Soccer Barnett, and Louisa Hawkins, greeting:

You are hereby commanded and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of Saint Louis, State of Missouri, sixty days from
53 and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States District Court for the Eastern District of Oklahoma, wherein the United States of America is appellant and you are appellees, to show cause if any there be why the judgment and decree rendered against said United States of America, appellant, as in said decree mentioned should not be corrected and why speedy justice should not be done in that behalf.

Witness, the Honorable Ralph E. Campbell, judge of the United States District Court for the Eastern District of Oklahoma, this 8th day of January, 1915.

RALPH E. CAMPBELL,

*Judge of the United States District Court
for the Eastern District of Oklahoma.*

Service of the foregoing citation is acknowledged this 21 day of January, 1915.

N. A. GIBSON and
HARRY H. ROGERS,

Solicitors of Record for Defendants, Walter Ferguson, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarlin, Planters Trust Company, a corporation, the Creek Investment Company, a corporation, and the Oklahoma Mining & Investment Company, a corporation.

Return on service of writ.

UNITED STATES OF AMERICA,
Eastern District of Okla., ss:

I hereby certify and return that I served the annexed citation on the therein-named L. L. O'Bannon personally at Okemah on the 25

day of January, 1915; served of T. A. Manwarring by delivering copy to Mrs. T. A. Manwarring, wife, at his usual place of abode, 15 miles north from Okemah, on the 25 day of January, 1915; served on Soccer Barnett by delivering copy to Sallie Johnson, an adult member of his family, at his usual place of above, seven miles east from Okemah, in said district, on the 25th day of January, A. D. 1915.

B. A. ENLOE, Jr., *U. S. Marshal.*
By JOHN T. MONTGOMERY, *Deputy.*

54

Return on service of writ.

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I hereby certify and return that I served the annexed citation on the therein-named A. A. Hatch by handing to and leaving a true and correct copy thereof with the said A. A. Hatch personally at Tulsa, Okla., in said district, on the 26th day of January, A. D. 1915.

B. A. ENLOE, Jr., *U. S. Marshal.*
By W. N. ELLIS, *Deputy.*

PRECIPE FOR PRINTING RECORD AND ELECTION AS TO PRINTING
RECORD.

To the Honorable R. P. Harrison, clerk of the above-named court:

You are hereby notified that the United States of America, having appealed from the decree rendered against it in the above-entitled cause, elects to have the transcript of the record in said cause printed under your official supervision under the act of Congress of February 13, 1911, and respectfully requests that the transcript in said cause be printed as required by law under your direction in accordance with this election; and you are requested to make a transcript of the record in the above-entitled cause to be printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the appeal allowed in said cause, and to include in said transcript of record the following, and no other, papers or exhibits:

1. Bill of complaint.
2. Answer of defendants, Walter Ferguson, T. A. Manwarring, F. M. Hale, Harry H. Rogers, Alfred Goat, L. L. O'Bannon, William A. Eubanks, J. A. Chapman, R. M. McFarlin, Planters Trust Company, a corporation, the Creek Investment Company, a corporation, Oklahoma Mining & Investment Co., a corporation.
3. Order pro confesso against defendants, A. A. Hatch and Soccer Barnett.
4. Motion of complainant to strike answer.
5. Order of the court overruling motion to strike answer.
6. Order of the court granting defendants leave to amend by striking portions of the answer.
- 55 7. Agreed statement of facts filed in open court July 13, 1914.
8. Final decree of court.

9. Petition and application of complainant for appeal.
10. Assignment of errors.
11. Order of court allowing appeal.
12. Citation and service thereof, and acceptance of service thereof.
13. Election and praecipe for printing record and service thereof, and acceptance of service thereof.
14. Clerk's certificate.

W. P. MCGINNIS,
*Special Assistant to the United States
Atty. Solicitor for Complainant.*

We the undersigned solicitors for the defendants and appellees do hereby acknowledge service on us of the above designation of parts of the record necessary for the consideration of the errors assigned by the United States of America, complainant in the above named cause, and appellant, from the decree rendered therein, and waive the designation of any further part or parts of the record, and agree that the above includes all the portion of such record material and necessary for the consideration of the errors assigned by the United States of America, and agree that Louisa Hawkins, named as one of the defendants in complainant's bill of complaint, upon whom no service was ever had, is not a material or necessary party to the proper determination of this case, and also accept service of the same, and service of the above election as to the printing of the record.

Dated this 21st day of January, 1915.

N. A. GIBSON and
HARRY H. ROGERS,
*Solicitors of Record for Defendants, Walter Ferguson, F. M.
Hale, Harry H. Rogers, Alfred Goat, William A. Eu-
banks, J. A. Chapman, R. M. McFarlin, Planters Trust
Company, a corporation, the Creek Investment Company,
a corporation, and the Oklahoma Mining & Investment
Company, a corporation.*

56

Return on service of writ.

UNITED STATES OF AMERICA,
E. District of Okla., ss:

I hereby certify and return that I served the annexed praecipe printing record and election as to printing record on the therein-named L. L. O'Bannon personally at Okemah on the 25 day of January, 1915; served on T. A. Manwarring by delivering copy to Mrs. T. A. Manwarring, wife, at his usual place of abode 15 miles north from Okemah, on the 25 day of January, 1915; served on Soccer Barnett by delivering copy to Sallie Johnson, an adult member of his family, at his usual place of abode seven miles east from Okemah, at ——— in said district on the 25th day of January, A. D. 1915.

B. A. ENLOE, JR., *U. S. Marshal.*
By JOHN T. MONTGOMERY, *Deputy.*

Return on service of writ.

UNITED STATES OF AMERICA,
Eastern District of Okla., ss:

I hereby certify and return that I served the annexed praecipe for printing record and election as to printing record on the therein-named A. A. Hatch by handing to and leaving a true and correct copy thereof with the said A. A. Hatch personally at Tulsa, Okla., in said district, on the 26th day of January, A. D. 1915.

B. A. ENLOE, JR., *U. S. Marshal.*
 By W. N. ELLIS, *Deputy.*

57 Certificate of clerk.

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. HARRISON, clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true, and correct copy of so much of the record and proceedings in the case of the United States of America v. Walter Ferguson et al., No. 1972 equity, as was ordered by praecipe of counsel filed herein.

I further certify that the citation attached hereto and returned herewith is the original citation issued in this cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in the city of Muskogee this 5th day of February, A. D. 1915.

[SEAL.]

R. P. HARRISON, *Clerk,*
 By H. E. BOUDINOT, *Deputy.*

Filed Mar. 8, 1915. John D. Jordan, clerk.

58 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

APPEARANCE OF COUNSEL FOR APPELLANT.

UNITED STATES OF AMERICA, APPELLANT,	} United States Circuit Court of Appeals, Eighth Circuit. No. 4428.
<i>vs.</i>	
WALTER FERGUSON ET AL., APPELLEES.	

The clerk will enter my appearance as counsel for the appellant.

D. H. LINEBAUGH,
*United States District Attorney
 for the Eastern District of Oklahoma.*

W. P. MCGINNIS,
Special Assistant to the United States District Attorney.

ARCHIBALD BONDS,
Special Assistant to the United States District Attorney.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Apr. 12, 1915.

APPEARANCE OF COUNSEL FOR APPELLEES.

The clerk will enter my appearance as counsel for the appellees.

N. A. GIBSON.

HARRY H. ROGERS,

(Endorsed :) Filed in U. S. Circuit Court of Appeals May 25, 1915.

59

ORDER OF SUBMISSION.

May term, 1915.

TUESDAY, MAY 25, 1915.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Archibald Bonds for appellant and concluded by Mr. Harry H. Rogers for appellees.

Thereupon this cause was submitted to the court on the transcript of record from said District Court and the briefs of counsel filed herein.

60

OPINION.

United States Circuit Court of Appeals, Eighth Circuit. May term, A. D. 1915.

UNITED STATES OF AMERICA, APPELLANT, }
vs. } No. 4428.
WALTER FERGUSON ET AL., APPELLEES. }

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. Archibald Bonds, special assistant to the U. S. attorney (Mr. D. H. Linebaugh, U. S. attorney, and Mr. W. P. McGinnis, special assistant to the U. S. attorney, were with him on the brief), for appellant.

Mr. Harry H. Rogers (Mr. N. A. Gibson was with him on the brief), for appellees.

Before Sanborn and Carland, circuit judges, and Trieber, district judge.

CARLAND, Circuit Judge, delivered the opinion of the court:

This is an action commenced by appellant for the purpose of cancelling certain conveyances purporting to convey lands which had theretofore been allotted to Suk-pi-e-chee or Henehar Kochokney, deceased, a full-blood member of the Creek Tribe or Nation of Indians. The conveyances were executed by Marche Yekcha, son and heir of Suk-pi-e-chee, subsequent to April 26, 1906, and were not approved by the Secretary of the Interior or judge of the County

Court. It is claimed by appellant that Eliza, the mother of Marche Yekcha, was a full-blood Seminole Indian, and that therefore Marche Yekcha was a full-blood Indian, subject to the restrictions against the alienation of Indian lands. The land in contro-
 61 versy was duly selected by and patented to Henehar Koch-okney, who died March 3, 1903. Marche Yekcha was enrolled as a half-blood opposite No. 1278 on the Seminole roll of Indians by blood.

At the trial appellant offered to show, by the testimony of three witnesses, to-wit, Jacob Harrison, Concharty, and Catcha Holatka, that the mother of Marche Yekcha was a full-blood Seminole Indian. The trial court ruled that the Seminole roll of Indians by blood was conclusive upon the question as to the quantum of Indian blood possessed by Marche Yekcha, and that as the act of Congress of April 26, 1906, contained no restrictions as to mixed-blood Indians, decided that the appellant could not maintain the action and dismissed the bill. It thus appears that the only question for decision is as to whether the roll of Seminole Indians by blood, as prepared by law, is conclusive against collateral attack. As bearing upon the question, we set forth the following excerpts from the legislation of Congress. Section 22 of the act of Congress of April 26, 1906 (34 Stat. L., 137), provides:

"That the adult heir of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent * * *."

Section 19 of the same act of Congress of April 26, provides:

"* * * and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes, approved by the Secretary of the Interior * * *."

The Indian appropriation act of June 21, 1906 (34 Stat. L., 325), among other things provides:

"That the Secretary of the Interior shall, upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes, and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection * * *."

The following is the record concerning Marche Yekcha in the Seminole roll of Indians by blood:

62 "Seminole roll, Indians by blood. No. 1278; name, Yekcha, Marche; age, 30; sex, M.; blood, $\frac{1}{2}$. Tribal enrollment; year, 1897; band, Echo Emarthoge; No. 1; census card No. 380."

By section 3 of the act of May 27, 1908 (35 Stat. L., 312), Congress again declared its purpose of making the rolls conclusive evidence as follows:

"That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be con-

clusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes * * *."

This court in *Malone v. Alderdice*, 212 Fed., 668, and in *Nunn v. Hazelrigg*, 216 Fed., 330, decided that:

"The Commission to the Five Civilized Tribes, which made the enrollment of their citizens and freedmen, was a quasi-judicial tribunal empowered to determine who should be enrolled and what land should be allotted and in what way it should be allotted to every citizen and freedman, and its adjudication of these questions and of every issue of law and fact that it was necessary for it to determine in order to decide these questions is conclusive and impervious to collateral attack."

The Circuit Court for the Eastern District of Oklahoma in the case of *Bell v. Cook*, 192 Fed., 597, decided the question in the same way. To the same effect is *Yarbrough v. Spaulding*, 31 Okla., 806; *Lawless v. Raddis*, 129 Pac., 711.

It results that the ruling of the trial court in excluding evidence offered for the purpose of showing that the mother of *Marche Yekcha* was a full blood was correct and the judgment below is

Affirmed.

Filed July 9, 1915.

63

DECREE.

United States Circuit Court of Appeals, Eighth Circuit. May term, 1915.

SATURDAY, July 24, 1915.

UNITED STATES OF AMERICA, APPELLANT,

vs.

WALTER FERGUSON, T. A. MANWARRING, A. A. HATCH,
L. L. O'Bannon, F. M. Hale, Harry H. Rogers, Alfred
Goat, William A. Eubanks, J. A. Chapman, R. M. Mc-
Farlin, Planters Trust Company, a corporation, the
Creek Investment Company, a corporation, the Okla-
homa Mining and Investment Company, a corporation,
Soccer Barnett, and Louisa Hawkins.

No. 4428.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said district court in this cause, be, and the same is hereby, affirmed without costs to either party in this court.

July 24, 1915.

Comes now the appellant, the United States of America, by D. H. Linebaugh, United States District Attorney for the Eastern District of Oklahoma, by direction of the Honorable Thomas W. Gregory, Attorney General of the United States, and represents and shows to the court that the appellant feels itself aggrieved by the order and judgment of this court made and entered in the above entitled cause on the 24th day of July, 1915, wherein this court affirmed the judgment of the District Court of the United States for the Eastern District of Oklahoma, from the judgment of which court the appellant prosecuted its appeal to this court, and appellant does hereby, in open court, pray an appeal from said order and judgment of this honorable court to the Supreme Court of the United States for the reason and upon the grounds specified in the assignment of errors filed herewith, and that a transcript of the record and the proceedings upon which said order and judgment is based, duly authenticated, may be sent to the Supreme Court of the United States by the clerk of this court, and your petitioner further prays that a proper order touching the security to be required of the appellees, if any, and an order directing the clerk to send up the record in this case and perfect the appeal herein be duly made.

D. H. LINEBAUGH,

United States Attorney for the Eastern District of Oklahoma, Attorney for Appellant.

Upon consideration of the foregoing petition it is now here ordered that the appeal to the Supreme Court of the United States, as therein prayed, be, and the same is hereby, allowed this 8th day of July, 1916.

WALTER H. SANBORN,

U. S. Circuit Judge in and for the Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, July 8, 1916.

The United States of America, appellant in the above entitled cause, respectfully asserts and shows to this honorable court that in the decree and judgment of this honorable court in the above entitled cause entered on the 24th day of July, 1915, affirming the judgment of the United States District Court for the Eastern District of Oklahoma, the following errors were committed by the court to the injury and prejudice of the appellant, to-wit:

First. The court erred in affirming the judgment of the District Court for the Eastern District of Oklahoma, as shown by the opinion of said court and the order of this court filed with the clerk hereof on the 24th day of July, 1915.

Second. The court erred in holding that the trial court committed no error in sustaining the objections made by the defendants to certain testimony offered by the appellant, to-wit, the testimony of three witnesses, namely, Jacob Hanson, Concharte and Catcha Holatka, to show that said witnesses were personally acquainted with Eliza, the mother of the said full blood Indian heir, whose conveyance was in question, and personally knew her to be a woman of the full Seminole Indian blood.

Third. The court erred in finding and holding that Marche Yekcha was not a full blood Indian within the meaning of the acts of Congress imposing restrictions upon the alienation of lands inherited by heirs who are full blood Indians.

Fourth. The court erred in finding and decreeing that Marche Yekcha cannot be regarded as a full blood Indian within the meaning of the acts of Congress imposing restrictions upon the alienation of lands inherited by heirs who are full blood Indians.

Fifth. The court erred in holding that none of the deeds attached to and made a part of the agreed statement of facts filed in this cause and appearing to have been executed by the said Marche
66 Yekcha were executed at a time when the alienation of the lands sought to be conveyed thereby was inhibited or restricted by the provisions of any act of Congress.

Sixth. The court erred in rendering its decision herein in favor of the defendants and against the appellant.

Seventh. The court erred in not rendering its decree herein in favor of the appellant and against the defendants.

Eighth. The court erred in not finding, concluding, and holding that Marche Yakcha was a full blood Indian within the meaning of the acts of Congress prohibiting the alienation of lands inherited by full blood Indian heirs from alienating the same without the approval of the Secretary of the Interior.

Ninth. The court erred in not finding, concluding, and holding that Marche Yekcha was a full blood Indian heir within the meaning of the acts of Congress prohibiting the alienation of inherited lands by full blood Indians without the approval of the probate court having jurisdiction of the settlement of the estate of the deceased allottee and ancestor of such full blood Indian heir.

Tenth. The court erred in not admitting in evidence the testimony offered by the appellant for the purpose of showing that the mother of Marche Yekcha was a Seminole Indian of the full blood.

Eleventh. The court erred in not finding, holding, and concluding that Marche Yekcha was a full blood Indian, as shown by the rolls of Indians of the Five Civilized Tribes made up by the Dawes Commission and approved by the Secretary of the Interior and known as the final rolls of said tribes of Indians.

Twelfth. The court erred in not quieting the title to the lands in question in Marche Yekcha as against the defendants or any one claiming through or under them.

67 Wherefore appellant prays that said judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit, made and entered in this cause on the 24th day of July, 1915, and the decree of the United States District Court for the Eastern District of Oklahoma, made and entered on the 13th day of July, 1914, be reversed, and that the Supreme Court of the United States make and render such proper decree on the record in this cause as shall conform to the facts disclosed by the record and the law applicable thereto.

D. H. LINEBAUGH,
*United States Attorney for the Eastern District
of Oklahoma, Solicitor for Appellant.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, July 8, 1916.

STIPULATION AS TO AMOUNT IN CONTROVERSY.

It is hereby stipulated by and between the parties to the above-styled cause, through their counsel of record, that the lands involved in this controversy are situated within the State of Oklahoma and in the Eastern District thereof; that the said lands did, at the beginning of this suit, and do now, comprise certain land in the Creek Nation upon which is located a portion of the Emehaka Mission, a school erected by the Seminole Tribe of Indians for Indian children; that the value of said lands involved in this case is many thousand dollars, and that said lands were at the commencement of this suit of a value in excess of \$1,000.00, exclusive of costs, and that the land in controversy in this cause exceeds \$1,000.00, exclusive of costs.

JNO. W. DAVIS,
Solicitor General.
D. H. LINEBAUGH,
United States Attorney, Eastern District of Oklahoma.
HARRY H. ROGERS,
N. A. GIBSON,
Solicitors for Appellees.

68 (Endorsed:) Filed in U. S. Circuit Court of Appeals, July 17, 1916.

69 United States of America, ss:

To Walter Ferguson, T. A. Manwarring, A. A. Hatch, L. L. O'Bannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Planters Trust Company, a corporation, the Creek Investment Company, a corporation, the Oklahoma Mining & Investment Company, a corporation, Soccer Bennett, and Louise Hawkins, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal

allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the United States of America is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants in the appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, presiding judge of the United States Circuit Court of Appeals for the Eighth Circuit, this 8th day of July, A. D. 1916.

WALTER H. SANBORN,
*Presiding Judge of the United States Circuit
Court of Appeals for the Eighth Circuit.*

Due and personal service of the above and foregoing citation is hereby acknowledged this the 12 day of July, 1916, on behalf of Walter Ferguson, T. A. Manwarring, A. A. Hatch, L. L. O'Bannon, F. M. Hale, Harry H. Rogers, Alfred Goat, William A. Eubanks, J. A. Chapman, R. M. McFarland, Planters Trust Company, a corporation, the Creek Investment Company, a corporation, the Oklahoma Mining & Investment Company, a corporation, Soccer Burnett, and Louisa Hawkins, appellees, by their solicitors of record.

HARRY H. ROGERS,
NATHAN A. GIBSON,
Solicitors for Appellees.

70 (Endorsed:) In the Supreme Court of the United States. October term, 1916. No. —. United States of America, appellant, vs. Walter Ferguson et al. Citation on appeal. Filed Jul. 12, 1916. John D. Jordan, clerk.

71 CLERK'S CERTIFICATE.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed, and certified by the clerk of said District Court to the United States Circuit Court of Appeals, in pursuance of the act of Congress approved February 13, 1911, and full, true, and complete copies of the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals, wherein the United States of America is appellant and Walter Ferguson et al. are appellees, No. 4428, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

I do further certify that on the twenty-seventh day of September, A. D. 1915, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the judges of the District Court of the United States for the Eastern District of Oklahoma.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this nineteenth day of July, A. D. 1916.

[SEAL.]

JOHN D. JORDAN,

*Clerk of the United States Circuit Court of
Appeals for the Eighth Circuit.*

Doc. rev. stamp not required on this certificate.

(Indorsement on cover:) File No. 25427. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 597. The United States, appellants vs. Walter Ferguson, T. A. Manwarring, A. A. Hatch, et al. Filed August 1st, 1916. File No. 25427.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES,

Appellant,

v.

WALTER FERGUSON, T. A. MANWARRING,
A. A. HATCH, *et al.*

No. 238.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This appeal of the United States is from a decree of the Circuit Court of Appeals for the Eighth Circuit (R. 53) affirming a decree of the District Court for the Eastern District of Oklahoma (R. 43) dismissing the Government's bill of complaint (R. 1) which sought the cancellation of certain deeds purporting to convey a full-blood Creek allotment, executed by Marche Yekcha, an alleged full-blood Indian heir of the allottee in contravention of the Acts of April 26, 1906, sec. 22, 34 Stat. 137, 145, and May 27, 1908, sec. 9, 35 Stat. 312, 315.

The bill alleges the allotment to Suk-pi-e-chee or Henehar Kochokney, "a duly enrolled full-blood

member and citizen of the Creek Tribe," of the tract in question "as his distributive share of the public lands of the Creek Tribe," and the issuance of patents therefor (par. 3); that the allottee died on or about March 3, 1903, leaving as his sole heir Marche Yekcha, his son, and further (par. 4)—

that the mother of the said Marche Yekcha was a duly enrolled citizen and member of the Seminole Tribe of Indians of the full blood, who was the wife of said Suk-pi-e-chee or Henehar Kochokney; and that said Marche Yekcha is a full-blood Indian, being a one-half blood Seminole Indian and one-half blood Creek Indian.

In their answer the defendants (R. 9) "admit that the said Suk-pi-e-chee or Henehar Kochokney was a duly enrolled full-blood member of the Creek tribe," admit the allotment and patent to him as such of the tract in question in the Creek Nation as alleged in the bill (par. 4), and further (par. 5)—

they admit that the said Suk-pi-e-chee, or Henehar Kochokney died on or about the 3d day of March, 1903, leaving surviving him as his sole heir his son, Marche Yekcha; and they admit that the mother of the said Marche Yekcha was a duly enrolled member and citizen of the Seminole Tribe of Indians, of full-blood Seminole Indian, who was the wife of Suk-pi-e-chee, or Henehar Kochokney, and they admit that the said Marche Yekcha is a half-blood Seminole Indian and a half-blood Creek Indian, but deny that the said Marche Yekcha is a full-blood Indian, but

they charge and aver that the said Marche Yekcha was enrolled opposite No. 1278 of the approved rolls of the Seminole Tribe of Indians as a half-blood Seminole, and as such at the time he made the conveyances to these defendants complained of in complainant's bill of complaint he had a good and sufficient right to convey the said lands.

Thereupon the defendants aver that the land was subject to transfer by Yekcha after April 26, 1906, and they claim under various deeds executed by him after that date.

The case was submitted on an agreed statement "together with such parts of the pleadings as are expressly admitted to be true" (R. 18), and the following was stipulated (R. 19):

The said Marche Yekcha was duly enrolled as a Seminole Indian, his name appearing on the final approved rolls of Seminole Indians by blood opposite No. 1278, and he is designated on the said roll as being of the one-half Seminole Indian blood.

It was further stipulated with reference to the deeds under which the defendants claim (R. 20):

None of the said deeds has ever been approved by the Secretary of the Interior of the United States or by any court or judge of the State of Oklahoma.

Counsel for the Government offered to prove by witnesses who knew the mother of Yekcha during her lifetime that she was "a woman of the full Seminole Indian blood," objection to which was

sustained (R. 43-44). Thereupon the District Court, as stated in its decree, concluded (R. 44)—

as a matter of law that Marche Yekcha has not been and can not be regarded as a full-blood Indian within the meaning of the acts of Congress imposing restrictions on the alienation of lands inherited by heirs who are full-blood Indians.

The Court of Appeals said in its opinion (R. 52):

At the trial appellant offered to show, by the testimony of three witnesses, to wit, Jacob Harrison, Concharty, and Catcha Holatka, that the mother of Marche Yekcha was a full-blood Seminole Indian. The trial court ruled that *the Seminole roll* of Indians by blood was conclusive upon the question as to the quantum of Indian blood possessed by Marche Yekcha, and that as the act of Congress of April 26, 1906, contained no restrictions as to mixed-blood Indians, decided that the appellant could not maintain the action and dismissed the bill. It thus appears that the only question for decision is as to whether *the roll of Seminole Indians* by blood, as prepared by law, is conclusive against collateral attack.

The court apparently did not consider the effect of the rolls of the Five Civilized Tribes, as stipulated, that Marche Yekcha was a half-blood Seminole and a half-blood Creek, and therefore a full-blood Indian. This was brought to the court's attention in the assignment of errors (R. 45) and pressed in the Government's brief, but it is not mentioned in the opinion.

The error of the District Court, if any, in excluding testimony to show that the mother of Marche Yekcha was a full-blood Seminole is inconsequential, since that fact was plainly admitted in the answer and the agreed statement of facts.

Specification of Error.

The various specifications in the present assignment of errors (R. 54), omitting the second and tenth which relate to the exclusion of oral testimony to show the blood of Marche Yekcha's mother, may be reduced to one that is fundamental, namely:

Error in holding that Marche Yekcha is not a full-blood Indian.

The Statutes.

Section 19 of the Act of April 26, 1906, 34 Stat. 137, 144, contains the following:

That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of 25 years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress; and *for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior.*

Section 22 of the same act reads as follows:

That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a State or Territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. *All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.*

Section 9 of the Act of May 27, 1908, 35 Stat. 312, 315, contains the following provision:

That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee.*

The first paragraph of section 3 of the same Act provides:

That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes and of no other persons to determine questions arising under this act, and the enrollment records of the Commissioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman.

And the Indian Appropriation Act of June 21, 1906, 34 Stat. 325, 340, contains the following clause:

That the Secretary of the Interior shall, upon completion of the approved rolls, have prepared and *printed in a permanent record book such rolls of the Five Civilized Tribes* and that *one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection.*

ARGUMENT.

The sole question for decision is whether an Indian who is half-blood Seminole and half-blood Creek is a full-blood Indian of the Five Civilized Tribes. Properly speaking, this is no question at all. It is not susceptible of discussion. It answers itself. The only justification for any observations upon it is to make sure that it is the point in issue.

It is admitted by the defendants in their answer that the tract in question was the allotment of

Kochokney, a full-blood Creek Indian; that upon his death, March 3, 1903, the land descended to Yekcha, the allottee's son and sole surviving heir; that Yekcha's mother, the deceased wife of the deceased allottee, was a full-blood Seminole Indian, and that the deeds executed by Yekcha and under which the defendants claim title were not approved by competent authority, as required by law in the case of allotted lands inherited by a full-blood Indian of the Five Civilized Tribes. Not only are these facts admitted, but it is admitted that the facts as to blood status are those shown by the approved rolls of the Five Civilized Tribes. The issue, if such it may be called, is sharply drawn by the defendants in their answer where "they admit that the said Marchee Yekcha is a half-blood Seminole Indian and a half-blood Creek Indian, but deny that the said Marchee Yekcha is a full-blood Indian, but they charge and aver that the said Marchee Yekcha was enrolled opposite No. 1278 of the approved rolls of the Seminole Tribe of Indians as a half-blood Seminole, and as such at the time he made the conveyances to these defendants complained of in complainant's bill of complaint he had a good and sufficient right to convey the said lands."

The courts below seem to have regarded Yekcha as only a half-blood Indian because he was enrolled as a half-blood Seminole and because the law makes the approved rolls of the Five Civilized Tribes determinative of "the quantum of Indian blood possessed by any member of said tribes." Act of

April 26, 1906, sec. 19, 34 Stat. 137, 144. There are a number of reasons why this view is inadmissible.

It is against the plain language of the law. The inhibition against conveyances of inherited Indian lands of the Five Civilized Tribes by "heirs who are full-blood Indians," in section 22 of the same Act, or by "any full-blood Indian heir," in section 9 of the Act of May 27, 1908, 35 Stat. 315, does not admit of a construction which would exclude from its operation conveyances by any class of full-blood Indian heirs.

If this plain language could be passed over, there is yet no conceivable reason for excepting any full-blood Indian heir because his parents belonged to different tribes. This court has said, speaking of all full-blood Indians of the Five Tribes: "The sections of the act of April 26, 1906, under consideration show a comprehensive system of protection as to such Indians." *Tiger v. Western Investment Co.*, 221 U. S. 286, 306. And again, that "the act of April 26, 1906, was a comprehensive one, and intended to apply alike to all of the Five Civilized Tribes, and to make requirements as to conveyances by full-blood Indians and the full-blood heirs of Indians, which should take the place of former restrictions and limitations. The purpose was to substitute a new and uniform scheme controlling alienation in such cases, operating alike as to all the Five Civilized Tribes." *Brader v. James*, decided March 4, 1918. In such a scheme there is no place for exception of any full-blood Indian.

It is also a matter of history and of common knowledge that the Creeks and Seminoles, like the Choctaws and Chickasaws, were very closely united and freely intermarried. The children of such marriages where both the parents are full-blood Indians are not less full-blood Indians than are the pure bloods of the particular tribes. To hold that they are not full-blood Indians would very largely defeat the comprehensive system established by Congress for the protection of such Indians.

Moreover, to say that Yekcha's enrollment as a half-blood Seminole is conclusive that he is only a half-blood Indian, is to give effect to but one portion of the rolls of the Five Civilized Tribes and to disregard another and equally competent portion. It is not any particular portion of the rolls that is made determinative of "the quantum of Indian blood possessed by any member of said tribes." It is "the rolls of citizens of said tribes." That is, the rolls of all the Five Tribes. If there were any doubt about this, it would be removed by the clause in the Indian Appropriation Act approved two months later, June 21, 1906, 34 Stat. 325, 340, which requires that there shall be—

prepared and printed in a permanent record book such rolls of the Five Civilized Tribes and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection.

Such a book was prepared, printed and deposited in each recorder's office. It bears on its title page the following inscription:

The final rolls of citizens and freedmen of the Five Civilized Tribes in Indian Territory prepared by the Commission and Commissioner to the Five Civilized Tribes and approved by the Secretary of the Interior on or prior to March 4, 1907. Compiled and printed under authority conferred by the Act of Congress approved June 21, 1906 (34 Stat. L. 325).

It is this record book, containing the rolls of all the Five Tribes, and deposited in each recorder's office, that is made determinative of "the quantum of Indian blood possessed by any member of said tribes." Any purchaser of the land allotted to Kochokney in the Creek Nation would be bound by this record to know that he was a full-blood Creek. Any purchaser from Yekcha as the surviving son and heir of the allottee would be bound to know from this record that Yekcha is a half-blood Seminole, through his mother, a full-blood Seminole. Hence he would be bound to know that Yekcha is a full blood Indian, and as such could not convey this allotment inherited from Kochokney under the Act of April 26, 1906, without the approval of the Secretary of the Interior, or under the Act of May 27, 1908, without the approval of a competent court in Oklahoma.

CONCLUSION.

The decrees of the Circuit Court of Appeals and the District Court should be reversed and the case should be remanded to the District Court with a direction to enter a decree for the Government.

Respectfully submitted.

FRANCIS J. KEARFUL,
Assistant Attorney General.

APRIL, 1918.

O

MAR 15 1918

JAMES D. MAHER,
CLERK

No. 238.

In the
Supreme Court of the United States.
October Term, 1917.

UNITED STATES OF AMERICA, - - Appellant,
VERSUS
WALTER FERGUSON, et al., - - - Appellees.

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE EIGHTH CIRCUIT.**

Brief and Argument of Appellees.

HARRY H. ROGERS,
JOS. L. HULL,
NATHAN A. GIBSON,
Attorneys for Appellees.

In the
SUPREME COURT OF THE UNITED STATES.
October Term, 1917.

No. 238.

UNITED STATES OF AMERICA, - - Appellant,

vs.

WALTER FERGUSON, et al., - - - Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT OF APPELLEES.

The question involved in this case is whether Marche Yekcha, a Seminole Indian, enrolled upon the final and approved rolls of the Seminole Nation as of one-half blood, and the sole heir at law of his father, Henehar Kochokney, could legally convey the allotment of his said father in the Creek Nation

after April 26, 1906, without the approval of said conveyance by either the Secretary of the Interior or by a County Court of Oklahoma.

The land in controversy was duly selected by and patented to Henehar Kochokney who died March 3, 1903, and left as his sole heir at law his son Marche Yekcha, enrolled opposite No. 1278 upon the rolls of Seminole Indians by blood as of one-half blood. Marche Yekcha made various conveyances after April 26, 1906, to the grantors of the appellees Walter Ferguson and F. M. Hale. Said conveyances were based upon valuable considerations, but were never approved by the Secretary of the Interior or by the judge of any County Court of the State of Oklahoma.

Section 22 of the Act of Congress of April 26, 1906 (34 Stat. L. 137), provides:

"That the adult heir of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent."

No restrictions are imposed by this act upon mixed-blood Indians, but only upon those enrolled as full-blood Indians.

It is contended in this case that in spite of the fact that Marche Yekcha is enrolled as a half-blood Seminole, he is in fact a full-blood Indian and therefore unable to convey except with the approval of either the Secretary of the Interior or a proper County Court.

Section 19 of the Act of Congress of April 26, 1906, *supra*, provides:

“and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior.”

The Indian Appropriation Act of June 21, 1906 (34 Stat. L. 325), provides:

“That the Secretary of the Interior shall upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection.”

These rules were made conclusive to operate as a basis for the determination of the quantum of Indian blood so that at a glance it might be determined whether such Indian was prohibited from alienating lands inherited by him or owned by him or was permitted to alienate the same.

It has never been contended seriously by anyone that the quantum of Indian blood as shown upon the rolls was in truth an accurate determination of such fact, but in view of the difficulty which necessarily attended the exact determination of the quantum of Indian blood possessed by any enrolled citizen it was determined, and the Act of Congress provides, that the quantum of blood as shown upon these rolls should be conclusive, and for all purposes connected with the alienation of lands was a final determination not subject to collateral attack.

The Commission to the Five Civilized Tribes, currently known as the Dawes Commission, was a quasi-judicial body and had authority to determine whether or not applicants for membership in the Five Civilized Tribes should be enrolled, and if enrolled whether as Indians or freedmen, and if enrolled as Indians what quantum of Indian blood they possessed, and when such determination was reached and the evidence thereof recorded in the form of the final approved rolls, it was a matter of indifference as to the true fact of the quantum of blood, and the adjudication so reached was, and is, conclusive of all questions affecting the right of the enrolled citizen to alienate land.

In the case of *Nunn v. Hazelrigg*, 216 Fed. 330, the trial court held that the Indian rolls were con-

clusive as to the quantum of blood and therefore impervious to collateral attack, and this holding of the trial court was affirmed by the Circuit Court of Appeals, which used the following language:

“The result is that while the judgment is affirmed as to the conclusiveness of the judgment of the Dawes Commission, as to the question with reference to the defendants’ ownership, the judgment is reversed, and the cause remanded, with a direction to set aside the judgment and verdict and this ruling on demurrer and award a new trial.”

In *Malone v. Alderdice*, 212 Fed. 668, the court says:

“The Commission to the Five Civilized Tribes, which made the enrollment of their citizens and freedmen, was a quasi-judicial tribunal empowered to determine who should be enrolled and what land should be allotted and in what way it should be allotted to every citizen and freedman, and its adjudication of these questions and of every issue of law and fact that it was necessary for it to determine in order to decide these questions is conclusive and impervious to collateral attack.”

In *Lawless v. Raddis*, 129 Pac. 711, the court says:

“Congress in the exercise of its undoubted power to deal with the subject has enacted that

the rolls of citizenship of the Five Civilized Tribes shall be conclusive evidence of the quantum of Indian blood, not for the purpose of establishing that particular fact, but for the purpose of fixing the status of the allotment and the capacity of the allottee to alienate the same. It was competent for Congress to do this in the furtherance of its well-established policy in dealing with the Indians. By this Act of Congress it is not attempted nor intended to alter existing rules of evidence, but merely to determine the persons who have lands affected thereby."

In *Bell v. Cook*, 192 Fed. 597, the court, at page 604, says:

"Theretofore Congress had conferred on the United States Commission to the Five Civilized Tribes power to enroll the members of said tribes for the purpose of ascertaining thereby what persons were entitled to participate in the joint tribal property. And in making up said rolls to inquire and determine among other matters the age, sex and degree of Indian blood, if any, of such enrolled members, to the end that suitable governmental regulations and restrictions might be thrown around such persons as were found entitled to participate in the division of the tribal property against a waste of their property by inconsiderate and ignorant alienation, and said commission did in compliance with authority thus conferred, among other matters, inquire of, determine and state on the public rolls by it prepared, the age, sex and

degree of Indian blood, if any, possessed by those enrolled thereon. By section 3 of the Act of May 27th, above quoted, it is seen that Congress declared the public rolls of citizenship and of freedmen members of the Five Tribes conclusive evidence of the quantum of Indian blood possessed by an enrolled citizen or freedman, and by the enrollment records of the Commission the age of any enrolled citizen or freedman to be conclusive of the age of such person in the determination of the right of such person to alienate their allotments. The object, purpose and intent of Congress by this portion of the act was not by its *ipse dixit* to make that which was black, white, or the reverse, nor was it for the purpose of overthrowing the multiplication table nor was it enacted for the purpose of putting questions of fact beyond the pale of judicial inquiry. This, of course, it could not do and would not assume to attempt. On the contrary, however, said portion of the act, and the public rolls prepared under authority of Congress as well, were all part and parcel of a general scheme worked out and employed by the government in the allotment of tribal property in severalty to the members of the tribes and in an endeavor to protect such allottees in their several property rights by such means and to such extent as the exigencies of the case, the ignorance and environment of the allottee considered, was demanded for the best interests of the wards of the government. In carrying out this scheme of protection Congress, as it has the undoubted right to do, defined the word 'mi-

nor' as it did therein and referred any and all persons intending to become purchasers of any portion of the tribal property from an allottee thereof, not to the uncertain hazard of a judicial inquiry based on the evidence of ignorant, incompetent and interested witnesses, but to the fixed and definite public rolls to ascertain whether such allottee did or did not possess the qualified age or requisite degree of Indian blood to confer on him the power of disposition under the law. If an intending purchaser from an allottee of tribal property holding the public rolls in one hand, and the act in the other, by a comparison of the two found such allottee possessed the power of disposition under the act and the rolls, he was at liberty to purchase and he was protected in such purchase."

This case is cited with approval in *Yarbrough v. Spaulding*, 31 Okla. 806, 123 Pac. 843.

It is the contention of the appellant in this case that the trial court should have permitted proof to be offered to show the quantum of blood of the mother of Marche Yekcha. We respectfully submit that such was never the intention of Congress in its various provisions making the rolls of Indians conclusive as to the quantum of blood. It must have been the intention of Congress that for all purposes connected with the alienation of lands arising under the various Indian treaties and under the several

acts no way was left open to show the quantum of blood except as indicated from the face of the approved rolls, for to permit collateral inquiry as to the true facts of the quantum of blood would open the door wide to fraud and render land titles of such uncertainty as to affect the market for lands and destroy the beneficial effect arising from the Acts of Congress declaring the rolls conclusive as to the quantum of Indian blood. In the case of *Bell v. Cook, supra*, the court in passing upon this question uses the following language:

“In carrying out the scheme of protection Congress, as it had the undoubted right to do, defined the word ‘minor’ as it did therein and referred any and all persons intending to become purchasers of any portion of the tribal property from an allottee thereof, not to the uncertain hazard of a judicial inquiry based on the evidence of ignorant, incompetent and interested witnesses, but to the fixed and definite public rolls to ascertain whether such allottee did or did not possess the qualified age or requisite degree of Indian blood to confer on him the power of disposition under the law.”

The Act of Congress of March 3, 1893 (27 Stat. L. 545), provided for the creation of the Commission to the Five Civilized Tribes known as the Dawes Commission and authorized it to enter upon negotia-

tions with the various tribes for the purpose of procuring the allotment of their lands in severalty.

The Act of June 10, 1896 (29 Stat. L. '339), continued this Commission in power and gave it authority to make a complete roll of the citizenship of each of said nations and from their records, and also provided that "said rolls shall be, and are hereby, made rolls of citizenship of said nations."

The Act of Congress of June 28, 1898 (30 Stat. L. 495), authorized the said Commission to "make said rolls descriptive of the persons thereon," and the said Commission was authorized to take a census of each of said tribes and to adopt any other means deemed by them necessary to enable them to make such rolls. The Commission was to have access to all tribal rolls and records and had power through the courts of Indian Territory to compel the officers of the tribal government to deliver said rolls and records to it.

By the Act of April 26, 1906 (34 Stat. L. 137), mixed-blood Indians were permitted to sell their inherited lands and by section 19 of said act it was provided that the quantum of blood should be determined by the rolls, thus making it clear as to just which individuals could, and which could not, make a conveyance.

The Act of Congress approved May 27, 1908 (35 Stat. L. 312), provided in section 3 as follows:

“That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes.”

The record in this case discloses the enrollment of Marche Yekcha with such complete descriptive matter as to show conclusively that he was for all purposes arising under the act an Indian of one-half blood, and it is the contention of appellees in this case that the judgment of the Commission approved by the Secretary of the Interior, evidenced by the published and final rolls of the Seminole Nation, must stand as a final judgment, conclusive upon all persons as to the official quantum of Indian blood possessed by Marche Yekcha, and that it is not within the pale of judicial inquiry to take proof outside of this roll to determine whether in fact Marche Yekcha was other than a half-blood Seminole Indian.

We respectfully submit that the finality of the rolls as determining the quantum of Indian blood and the universal rule heretofore asserted by all courts passing upon this question has become a rule of property and should not be disturbed.

—*Reynolds v. Fewel*, 236 U. S. 58;

Truskett v. Closser, 236 U. S. 223,

and numerous other cases announcing the same doctrine. The Circuit Court of Appeals for the Eighth Circuit gave careful consideration to the question involved in the case and in its opinion affirming this case, reported in 225 Fed. 974, it uses the following language:

“At the trial appellant offered to show by the testimony of three witnesses, to-wit, Jacob Harrison, Concharty, and Catcha Holatka, that the mother of Marche Yekcha was a full-blood Seminole Indian. The trial court ruled that the Seminole roll of Indians by blood was conclusive upon the question as to the quantum of Indian blood possessed by Marche Yekcha, and that as the Act of Congress of April 26, 1906, contained no restrictions as to mixed-blood Indians, decided that the appellant could not maintain the action and dismissed the bill. It thus appears that the only question for decision is as to whether the roll of Seminole Indians by blood as prepared by law is conclusive against collateral attack. As bearing upon the question we set forth the following excerpts from the legislation of Congress. Section 22 of the Act of Congress of April 26, 1906 (34 Stat. 137, c. 1876), provides:

‘That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and

convey the lands inherited from such decedent * * * '

"Section 19 of the same Act of Congress of April 26, 1906, provides:

' * * * And for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior.'

"The Indian Appropriation Act of June 21, 1906 (34 Stat. 325, c. 3504), among other things provides:

'That the Secretary of the Interior shall, upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes, and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection * * * '

"The following is the record concerning Marche Yekcha in the Seminole roll of Indians by blood:

'Seminole Roll, Indians by Blood.

No. 1278: Name, Yekcha, Marche; Age, 30; Sex, M; Blood, $\frac{1}{2}$. Tribal Enrollment: Year, 1897, Band, Echo Emarthoge; No. 1; Census Card No. 380.'

"By section 3 of the Act of May 27, 1908 (35 Stat. 312, c. 199), Congress again declared its

purpose of making the rolls conclusive evidence as follows:

‘That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes * * *’

‘This court, in *Malone v. Alderdice*, 212 Fed. 668, 129 C. C. A. 204, and in *Nunn v. Hazlerigg*, 216 Fed. 330, 132 C. C. A. 474, decided that:

‘The Commission to the Five Civilized Tribes, which made the enrollment of their citizens and freedmen, was a quasi-judicial tribunal empowered to determine who should be enrolled and what land should be allotted and in what way it should be allotted to every citizen and freedman, and its adjudication of these questions and of every issue of law and fact that it was necessary for it to determine in order to decide these questions is conclusive and impervious to collateral attack.’

‘The Circuit Court for the Eastern District of Oklahoma in the case of *Bell v. Cook*, 192 Fed. 597, decided the question in the same way. To the same effect is *Yarbrough v. Spaulding*, 31 Okla. 806, 123 Pac. 843; *Lawless v. Raddis*, 36 Okla. 616, 129 Pac. 711.

‘It results that the ruling of the trial court in excluding evidence offered for the purpose

of showing that the mother of Marche Yekcha was a full-blood was correct, and the judgment below is affirmed.”

It may not be amiss to call the attention of the court again to the Act of June 21, 1906, *supra*, and to the fact that the rolls as prepared and furnished to the public under the authority of said act contained no statement of the names of the parents of enrolled Indians but merely stated their name, number and quantum of Indian blood and that all the world had a right to rely upon such rolls so published and issued, and that the purpose of Congress in preparing such rolls and making them public was to give finality to the adjudication there set out and to enable the public to be guided thereby. This court in *United States v. Bessie Wildcat*, 244 U. S. 111, in passing upon the power conferred upon the Commission to the Five Civilized Tribes, known as the Dawes Commission, by the various acts authorizing that Commission to investigate matters connected with the enrollment of Indians and the allotment of lands to them, recites the entire history of the authority conferred upon the Dawes Commission and their conduct under the several acts of Congress, including the Original and Supplementary Creek Agreements, and though the question in the *Wildcat* case does not directly bear upon the quantum of Indian blood or the effect of the declaration of Con-

gress that the adjudication of the Commission as to the quantum of Indian blood shall be final, does, nevertheless, so positively state that the adjudication of the Commission as to the right of enrollment is impervious to attack that we believe that it should be advisory and should be followed in the matter of the determination as to the finality of the findings of the Commission as to the quantum of Indian blood. The court in discussing the purpose of Congress uses the following language:

“In that act the Commission was authorized to investigate the subject, and its action, when approved by the Secretary of the Interior, was declared to be final. There was thus constituted a quasi-judicial tribunal whose judgments within the limits of its jurisdiction were only subject to attack for fraud or such mistake of law or fact as would justify the holding that its judgments were voidable. Congress, by this legislation, evidenced an intention to put an end to controversy by providing a tribunal before which those interested could be heard and the rolls authoritatively made up of those who were entitled to participate in the partition of the tribal lands. It was to the interest of all concerned that the beneficiaries of this division should be ascertained. To this end the Commission was established and endowed with authority to hear and determine the matter.”

Though the question of the degree of Indian blood of Barney Thlocco was not discussed in the

Wildcat case, we deem that if such had been an issue the court would undoubtedly have held that the adjudication of the Dawes Commission as to the degree of blood was equally as final and effective as was its adjudication relative to the greater question, to-wit, the right to enrollment and allotment, and we therefore submit that there can be no possible doubt but what it has always been the intention of Congress, and that this court should hold that the quantum of Indian blood as set out in the final approved rolls of the several Indian tribes, and particularly in this case of the Seminole tribe, upon which Marche Yekcha was enrolled, must, for all purposes connected with the alienation of his lands, be held to be a final adjudication not susceptible to collateral attack or to proof of a state of facts different from that indicated upon the face of the rolls, and that therefore the trial court and the Circuit Court of Appeals for the Eighth Circuit in holding that evidence was not admissible to vary the terms of the judgment of the Commission to the Five Civilized Tribes declaring Marche Yekcha a half-blood Seminole Indian, were in all things correct and should be affirmed.

Respectfully submitted,

HARRY H. ROGERS,
JOS. L. HULL,
NATHAN A. GIBSON,
Solicitors for Appellees.